

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL)
CERAMICS, INC. dba GLIDEWELL)
LABORATORIES,)
)
) Case No.
Plaintiff/Counter-Defendant,) SACV11-01309-DOC
) (ANx)
vs.)
)
Keating Dental Arts, INC.,)
)
)
Defendant/Counter-Plaintiff.)
_____)

DEPOSITION OF ROBIN BARTOLO
TAKEN TUESDAY, OCTOBER 23, 2012
IRVINE, CALIFORNIA

Reported by Lisa Moskowitz, CSR No. 10816, RPR, CLR

DIGITAL EVIDENCE GROUP
1726 M Street NW, Suite 1010
Washington, DC 20036
(202) 232-0646

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 DEPOSITION OF ROBIN BARTOLO, TAKEN ON</p> <p>2 BEHALF OF DEFENDANT/COUNTER-PLAINTIFF, AT</p> <p>3 9:40 A.M., TUESDAY, OCTOBER 23, 2012 AT 2040 MAIN</p> <p>4 STREET, 14TH FLOOR, IRVINE, CALIFORNIA, BEFORE</p> <p>5 LISA MOSKOWITZ, CSR 10816, RPR, CLR.</p> <p>6</p> <p>7 APPEARANCES OF COUNSEL</p> <p>8 FOR THE PLAINTIFF/COUNTER-DEFENDANT:</p> <p>9 LAW OFFICES OF LEONARD TACHNER</p> <p>10 BY: LEONARD TACHNER</p> <p>11 17961 SKY PARK CIRCLE, SUITE 38-E</p> <p>12 IRVINE, CALIFORNIA 92614-6364</p> <p>13 (949) 752-8525</p> <p>14 ltachner@aol.com</p> <p>15 FOR THE DEFENDANT/COUNTER-PLAINTIFF:</p> <p>16 KNOBBE, MARTENS, OLSON & BEAR, LLP</p> <p>17 BY: DAVID G. JANKOWSKI, PH.D.</p> <p>18 2040 MAIN STREET, 14TH FLOOR</p> <p>19 IRVINE, CALIFORNIA 92614</p> <p>20 (949) 760-0404</p> <p>21 david.jankowski@kmob.com</p> <p>22</p> <p style="text-align: right;">Page 2</p>	<p>1 E X H I B I T S (Cont'd)</p> <p>2 NO. PAGE DESCRIPTION</p> <p>3 Bartolo 97 Glidewell Authorized BruxZir</p> <p>4 Exhibit 99 Solid Zirconia Laboratories</p> <p>5 Website</p> <p>6 Bartolo 99 Glidewell Introducing</p> <p>7 Exhibit 100 www.BruxZir.com Website</p> <p>8 Bartolo 105 BruxZir. A New Option for</p> <p>9 Exhibit 101 Virtually Unbreakable</p> <p>10 Restorations Flier</p> <p>11 Bartolo 108 BruxZir Solid Zirconia</p> <p>12 Exhibit 102 Business Integration Program</p> <p>13 Flier</p> <p>14 Bartolo 111 BruxZir Solid Zirconia Crowns</p> <p>15 Exhibit 103 & Bridges Flier</p> <p>16 Bartolo 116 BruxZir Virtually Unbreakable</p> <p>17 Exhibit 104 Flier</p> <p>18 Bartolo 127 BruxZir Portfolio, dated</p> <p>19 Exhibit 105 January 26-27, 2012</p> <p>20 Bartolo 131 The Digital Dental Lab, dated</p> <p>21 Exhibit 106 January 26-27, 2012</p> <p>22 Bartolo 144 E-mail from Keith Allred,</p> <p>dated 4/29/11</p> <p>17 Exhibit 107</p> <p>18 Bartolo 145 E-mail Chain from Keith</p> <p>19 Exhibit 108 Allred, dated 2/14/11</p> <p>20 Bartolo 149 E-mail from Keith Allred,</p> <p>21 Exhibit 109 dated 4/18/11</p> <p>22 Bartolo 152 E-mail Chain from Keith</p> <p>Exhibit 110 Allred, dated 4/25/11</p> <p style="text-align: right;">Page 4</p>
<p>1 I N D E X</p> <p>2 DEPONENT</p> <p>3 EXAMINATION PAGE</p> <p>4 ROBIN BARTOLO</p> <p>5 BY MR. JANKOWSKI 6</p> <p>6 BY MR. TACHNER 178</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NO. PAGE DESCRIPTION</p> <p>10 Bartolo 9 Keating Dental Arts First</p> <p>11 Exhibit 92 Amended Notice of Deposition</p> <p>12 of Robin Bartolo, dated</p> <p>10/16/12</p> <p>13 Bartolo 86 Glidewell BruxZir Solid</p> <p>14 Exhibit 93 Zirconia Website</p> <p>15 Bartolo 86 Glidewell Prismatic Clinical</p> <p>16 Exhibit 94 Zirconia Website</p> <p>17 Bartolo 86 Glidewell Lava Crowns &</p> <p>18 Exhibit 95 Bridges Website</p> <p>19 Bartolo 91 Glidewell IPS e.max & Empress</p> <p>20 Exhibit 96 Website</p> <p>21 Bartolo 92 Glidewell BruxZir Milling</p> <p>22 Exhibit 97 Blanks Website</p> <p>Bartolo 96 Glidewell BruxZir Mill</p> <p>Exhibit 98 Website</p> <p style="text-align: right;">Page 3</p>	<p>1 E X H I B I T S (Cont'd)</p> <p>2 NO. PAGE DESCRIPTION</p> <p>3 Bartolo 165 Printout of Dental Lab</p> <p>4 Exhibit 111 Network Forum</p> <p>5 Bartolo 171 Printout of Dental Lab</p> <p>6 Exhibit 112 Network Forum</p> <p>7 Bartolo 173 Printout of Dental Lab</p> <p>8 Exhibit 113 Network Forum</p> <p>9 Bartolo 176 BruxZir Laboratory Summit</p> <p>10 Exhibit 114</p> <p>11</p> <p>12</p> <p>13</p> <p>14 EXHIBITS REFERENCED</p> <p>15 NO. PAGE DESCRIPTION</p> <p>16 Exhibit 10 154 Authorized BruxZir Labs</p> <p>17 Exhibit 29 155 Letter from Robin Bartolo,</p> <p>18 dated 8/9/11</p> <p>19 Exhibit 36 24 Glidewell Organization Chart</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 5</p>

Pages 2 to 5

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 ROBIN BARTOLO,</p> <p>2 having been first duly sworn,</p> <p>3 was examined and testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. JANKOWSKI:</p> <p>7 Q. Good morning, my name is David Jankowski.</p> <p>8 I'm an attorney representing Keating Dental Arts,</p> <p>9 the defendant in this lawsuit.</p> <p>10 Please state your full name for the</p> <p>11 record.</p> <p>12 A. Robin Bartolo, B-a-r-t-o-l-o.</p> <p>13 Q. And Glidewell Labs is your current</p> <p>14 employer; correct?</p> <p>15 A. That is correct.</p> <p>16 Q. What is your current title?</p> <p>17 A. Sales manager for Glidewell Direct.</p> <p>18 Q. Have you ever been deposed before?</p> <p>19 A. I have not.</p> <p>20 Q. Let me go through some ground rules to</p> <p>21 familiarize you with what's going to happen today.</p> <p>22 If you have any questions, please go ahead and ask</p> <p style="text-align: right;">Page 6</p>	<p>1 question before you begin your answer because the</p> <p>2 court reporter has a hard time capturing what</p> <p>3 we're saying if we're speaking over one another.</p> <p>4 Is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. If I ask a question that's unclear, let</p> <p>7 me know. If you do not ask for clarification,</p> <p>8 I'll assume that you understand what I am asking.</p> <p>9 Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. From time to time, your attorney,</p> <p>12 Mr. Tachner, may be making spoken objections.</p> <p>13 Unless your attorney instructs you not to answer a</p> <p>14 question, you must still answer my question.</p> <p>15 Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. If you'd like to take a break at any</p> <p>18 time, say so and we'll take a break at the next</p> <p>19 convenient stopping point. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. I do request we not take a break when a</p> <p>22 question is pending. We'll take breaks after</p> <p style="text-align: right;">Page 8</p>
<p>1 and we'll get them worked out.</p> <p>2 Do you understand the oath that the court</p> <p>3 reporter just administered to you?</p> <p>4 A. Yes.</p> <p>5 Q. Although this deposition is being taken</p> <p>6 in a conference room in the law offices of Knobbe,</p> <p>7 Martens in Irvine, California, it has the same</p> <p>8 force and effect as if you were testifying in a</p> <p>9 court of law before a jury and a judge.</p> <p>10 Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. I'm going to be asking you questions, and</p> <p>13 you're going to be providing answers to my</p> <p>14 questions. You must answer truthfully.</p> <p>15 Do you understand?</p> <p>16 A. Yes.</p> <p>17 Q. This deposition is being recorded by a</p> <p>18 court reporter; so please answer with spoken words</p> <p>19 rather than a nod or another nonverbal response;</p> <p>20 so she can type your spoken answer. Okay?</p> <p>21 A. Okay.</p> <p>22 Q. Please wait until I've completed a</p> <p style="text-align: right;">Page 7</p>	<p>1 questions have been answered. Okay?</p> <p>2 A. Fair.</p> <p>3 Q. Are you taking any prescription</p> <p>4 medication or other drugs?</p> <p>5 A. No.</p> <p>6 Q. Is there any reason you can't give</p> <p>7 truthful testimony here today?</p> <p>8 A. No.</p> <p>9 MR. JANKOWSKI: I'll have the court</p> <p>10 reporter mark, I believe we're up to Exhibit 92, a</p> <p>11 document entitled "Keating Dental Arts First</p> <p>12 Amended Notice of Deposition of Robin Bartolo."</p> <p>13 (Bartolo Exhibit No. 92 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. JANKOWSKI:</p> <p>16 Q. Mr. Bartolo, would you just briefly look</p> <p>17 at Exhibit 92.</p> <p>18 Have you seen this document before?</p> <p>19 A. I have not.</p> <p>20 Q. But you do understand you're testifying</p> <p>21 today in response to a deposition in a lawsuit</p> <p>22 involving Glidewell Labs and Keating Dental Arts?</p> <p style="text-align: right;">Page 9</p>

Pages 6 to 9

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. Yes.
 2 Q. Okay. Did you talk to anyone to prepare
 3 for today's deposition?
 4 A. Yes.
 5 Q. Who did you speak with?
 6 A. Leonard.
 7 Q. And did you speak to anybody other
 8 than -- let me first ask you: When did you speak
 9 with Mr. Tachner?
 10 A. Yesterday.
 11 Q. For how long did you speak with him?
 12 A. 20 minutes.
 13 Q. Did you speak with anybody other than
 14 Mr. Tachner?
 15 A. No.
 16 Q. So you haven't spoken to Mr. Shuck -- let
 17 me ask you a separate question. Have you spoken
 18 to Mr. Shuck since he had his deposition taken in
 19 this case?
 20 A. On this matter, no.
 21 Q. How about on the matter of his own
 22 deposition?

Page 10

1 A. No.
 2 Q. Okay. How about Mr. Carden?
 3 A. No.
 4 Q. Have you spoken to Mr. or Dr. DiTolla?
 5 A. No.
 6 Q. So you haven't spoken to anybody about
 7 the depositions they've given in this case?
 8 A. I have not.
 9 Q. Okay. And did you review any documents
 10 in preparation for your deposition today?
 11 A. Yes.
 12 Q. What documents did you review?
 13 A. The e-mail I sent to Mr. Keating.
 14 Q. Okay. Any other documents?
 15 A. No.
 16 Q. That's the only one?
 17 A. Yes.
 18 Q. What was your purpose for reviewing that
 19 document?
 20 A. It's the one I wrote suggesting that we
 21 could work something out. I figured it would come
 22 up today.

Page 11

1 Q. And you wanted to refresh your --
 2 A. Refresh my memory. It goes back a while.
 3 Q. Okay. In reviewing it, was it the way
 4 you remembered it?
 5 A. Yes.
 6 Q. Okay. Let's go over your background a
 7 little bit. What's your educational background
 8 after leaving high school?
 9 A. I have a bachelor of science in dental
 10 technology and marketing from the University of
 11 Illinois. SIU, Southern Illinois University.
 12 Q. I'm sorry. What degree was it?
 13 A. Bachelor of science.
 14 Q. In what major?
 15 A. Marketing.
 16 Q. Did you also throw a dental aspect in
 17 there?
 18 A. Yeah, my associate's was in dental
 19 technology.
 20 Q. Are those two separate degrees, a
 21 bachelor of science in marketing and an associates
 22 degree in dental technology?

Page 12

1 A. Correct.
 2 Q. What years were those degrees conferred
 3 on you?
 4 A. Graduated in 1985.
 5 Q. Were both degrees conferred
 6 simultaneously?
 7 A. No, the associates was first and then the
 8 bachelor's.
 9 Q. Okay. What year did you get the
 10 associate's degree?
 11 A. '83.
 12 Q. And both of those degrees were from
 13 Southern Illinois University?
 14 A. Correct.
 15 Q. Any other education after high school?
 16 A. No.
 17 Q. When you graduated with your degree in
 18 marketing in 1985, what did you do in terms of
 19 employment after that?
 20 A. I worked for Rosiello Dental Laboratory.
 21 Q. Can you spell that?
 22 A. Yes. R-o-s-i-e-l-l-o, Rosiello Dental

Page 13

Pages 10 to 13

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Laboratory.
 2 Q. It's a dental laboratory; so it would
 3 fabricate crowns and bridges and all that?
 4 A. Correct.
 5 Q. Where is it located?
 6 A. Monrovia, California.
 7 Q. And you began working there in 1985?
 8 A. Yes.
 9 Q. And for how long did you work there?
 10 A. One year.
 11 Q. And where did you go after leaving
 12 Rosiello?
 13 A. Vident, V-i-d-e-n-t. They're located in
 14 Brea, California.
 15 Q. That's also a dental laboratory?
 16 A. No. This is a company that represented
 17 the VITA porcelain company. So I sold porcelain
 18 mainly, dental porcelain.
 19 Q. Okay. So it would be selling porcelain
 20 to dental laboratories; correct?
 21 A. Yes.
 22 Q. What kind of -- first of all, over what
 Page 14

1 time frame did you work at Vident?
 2 A. 15 years.
 3 Q. So from 1986 to 2001?
 4 A. Well, 2000. 14 years.
 5 Q. And what types of porcelain were sold by
 6 Vident? Is it Vident or Vident?
 7 A. Vident.
 8 Q. What kind of porcelain did Vident sell?
 9 A. The VITA line of porcelains from Germany.
 10 We were the sole distributor of that product here
 11 in the U.S.
 12 Q. So there's a German parent?
 13 A. Yes. VITA.
 14 Q. How is that spelled?
 15 A. V-I-T-A.
 16 Q. V-I-T-A?
 17 A. Correct.
 18 Q. Did Vident sell any ceramic dental
 19 materials?
 20 A. Yes. Porcelain is a ceramic material.
 21 Q. Okay. What kind of materials were sold
 22 while you were there?
 Page 15

1 A. It was a traditional porcelain stacked
 2 over metal coping; so it's the traditional not
 3 considered outdated technique, but it was a
 4 layered porcelain build-up.
 5 Q. It's a technique that's not really done
 6 much today?
 7 A. It's still done, but it's not as common.
 8 Q. Was zirconia one of the materials that
 9 was sold by Vident?
 10 A. No, not at the time.
 11 Q. No zirconia at that time?
 12 A. No.
 13 Q. And how about the product Lava?
 14 A. It's not VITA's.
 15 Q. It's a competitor product, isn't it?
 16 A. Yes.
 17 Q. And what was your title when you were at
 18 Vident?
 19 A. Sales representative, then regional sales
 20 manager.
 21 Q. And was, at that time, Glidewell
 22 Laboratories one of your customers?
 Page 16

1 A. Yes.
 2 Q. When did you first start working with
 3 Glidewell Laboratories as a customer?
 4 A. Probably right away. So a good-sized
 5 laboratory in my territory; so I would have worked
 6 with Glidewell Laboratory probably in 1986.
 7 Q. And approximately how many different
 8 dental laboratories were you dealing with
 9 personally?
 10 A. Hundreds. I had multiple states; so it's
 11 a lot of customers.
 12 Q. What states were you responsible for?
 13 A. As a sales rep?
 14 Q. As a sales rep.
 15 A. California, Nevada, Arizona, Hawaii,
 16 Colorado.
 17 Q. And then when you were regional sales
 18 manager, did your territory expand?
 19 A. Yes, basically covered the western half
 20 of the U.S.
 21 Q. And at that point, how many dental labs
 22 were included in the western half of the United
 Page 17

Pages 14 to 17

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 States? Do you know?
 2 A. Thousands.
 3 Q. You said they're based in Brea,
 4 California?
 5 A. Correct.
 6 Q. Are they still in business today?
 7 A. Yes, they are.
 8 Q. And in 2001, when you left Vident -- or
 9 2000, I'm sorry, when you left Vident, what did
 10 you do next?
 11 A. I went to Sybron Dental Specialties.
 12 Q. S-y-b-r-o-n?
 13 A. Correct.
 14 Q. What is Sybron Dental Specialties?
 15 A. Sybron was a dental company that had
 16 several divisions, and I worked for the Kerr
 17 Corporation.
 18 Q. Spelled K-e-r-r?
 19 A. R-r, yes.
 20 Q. So is Kerr Corporation a subsidiary of
 21 Sybron?
 22 A. Yes.

Page 18

1 Q. So your employer, though, was Sybron or
 2 was it Kerr?
 3 A. I guess Kerr.
 4 Q. And over which years did you work at
 5 Kerr?
 6 A. 2000 to 2005.
 7 Q. And what was your title at Kerr?
 8 A. Global sales manager.
 9 Q. Based on the title, you were responsible
 10 for sales everywhere for Kerr; is that correct?
 11 A. Everywhere except the United States.
 12 Q. Okay.
 13 A. It just happened to be that way.
 14 Q. So global means outside the U.S. and
 15 somebody else at Kerr was responsible for U.S.
 16 sales?
 17 A. Correct.
 18 Q. Okay. And can you briefly describe what
 19 are the types of dental products that Kerr sold?
 20 A. Dental waxes, some equipment to handle
 21 the wax. It was a fairly small line, but as part
 22 of that product line, there was also a jewelry

Page 19

1 connection which was very strong internationally.
 2 It was a different model. We were working through
 3 dealers.
 4 Q. When you say "jewelry," do you mean that
 5 in the normal sense, jewelry?
 6 A. Yes. Casting a gold crown and casting a
 7 gold ring, the steps are very similar. Just the
 8 quantities are different.
 9 Q. So it wasn't strictly dental products?
 10 A. Correct.
 11 Q. Okay. And so then from 2000 to 2005
 12 since you were responsible for sales outside the
 13 U.S., you would not have been dealing with
 14 Glidewell at that time. Is that fair?
 15 A. It's fair, but occasionally I might have
 16 run into somebody at a convention. I would still
 17 help out. I was based here in California. Even
 18 though my responsibilities were outside, I would
 19 still be involved.
 20 Q. Like in an informal --
 21 A. Yes, helping out.
 22 Q. Okay. And so was the Kerr Corporation

Page 20

1 then selling jewelry or selling equipment?
 2 A. No, just the raw materials and equipment.
 3 Q. The raw materials wouldn't be including
 4 gold, for example?
 5 A. No, no. Just the casting powders. That
 6 was the main line.
 7 Q. They would buy Kerr's casting powders and
 8 use it to make gold products?
 9 A. Correct.
 10 Q. Where was your office when you were
 11 working at Kerr?
 12 A. That was in Orange, California. 1717
 13 Collins Avenue.
 14 Q. And when you left Kerr in 2005, what did
 15 you do next?
 16 A. Went to the Gemological Institute of
 17 America based in Carlsbad, California.
 18 Q. And what was your title there?
 19 A. Director of sales and marketing.
 20 Q. So the Gemological Institute of America
 21 does not have any dental application, does it?
 22 A. None whatsoever.

Page 21

Pages 18 to 21

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. So you were kind of getting away from
2 your --
3 A. Completely.
4 Q. -- your background.
5 Was there a particular reason why you
6 were getting away from dental?
7 A. No. It's the connection to the jewelry
8 that opened up a few opportunities. There was
9 something that was intriguing; so I tried
10 something different.
11 Q. What were your products then? Gems?
12 A. No. It was, again, on the equipment
13 side. So we were selling diamond-related products
14 to either assure there was indeed a diamond or to
15 validate the origin. So it was laboratory
16 equipment for the diamond industry, for the most
17 part. Microscopes, things of that nature.
18 Q. So I sense -- you don't have an
19 engineering degree, but you were a salesperson who
20 works on the technical side of these businesses in
21 a sense. Is that fair?
22 A. I certainly don't have an engineering
Page 22

1 degree, but I've been in sales and oftentimes that
2 involves equipment.
3 Q. Okay. And when did you leave the
4 Gemological Institute of America?
5 A. When I started work at Glidewell
6 Laboratories in January, 2009.
7 Q. And why did you leave the Gemological
8 Institute of America to join Glidewell?
9 A. The GIA had a lot of changes in the
10 organization and in their focus, and so it was
11 decided to deemphasize the international effort
12 which I was responsible for. So it was time to
13 look for another opportunity, and I went back to
14 what I knew best, which was the dental industry,
15 dental laboratory industry.
16 Q. And you knew people at Glidewell already
17 from your past. Is that fair?
18 A. Exactly. I knew them many years going
19 back to 1986.
20 Q. So you approached Glidewell --
21 A. Yes.
22 Q. -- about whether or not they had an
Page 23

1 opening?
2 A. Exactly.
3 Q. What was your position when you started
4 at Glidewell?
5 A. Sales manager for Glidewell Direct.
6 Q. Now, was that a position that existed
7 before you joined Glidewell?
8 A. Yes.
9 Q. Who was your predecessor in that
10 position?
11 A. Rozy Setoodegan.
12 Q. That's a mouthful. How do you spell
13 that?
14 A. S-e-t-o-o-d-e-g-a-n. Setoodegan.
15 Q. And let me show you something here. Let
16 me show you an exhibit that's been previously
17 marked as Exhibit 36. I've already asked other
18 Glidewell employees about this document, and
19 everybody seems to agree it's Glidewell's org
20 chart.
21 Have you seen this document before?
22 A. No.
Page 24

1 Q. Okay.
2 A. I mean I've seen a version of this, but I
3 don't believe I've seen this one.
4 Q. Okay. And one question I have -- in
5 fact, I remember when I was asking Dr. DiTolla
6 about it, he was wondering and I'm wondering where
7 Glidewell Direct is on --
8 A. I was going to say where am I?
9 Q. Yeah, I had the same question. I don't
10 think anybody in the room doubts your significance
11 to the company or that you have an important role,
12 but for whatever reason, it's not on this org
13 chart. Where do you think it would be? Is it
14 under Jim Shuck's advertising and marketing
15 direction, or is it its own separate area?
16 A. It used to be under Mr. Shuck.
17 Q. You've seen org charts where it is under
18 Mr. Shuck?
19 A. Yes, when I started, it was that way.
20 Q. Okay.
21 A. So I'm not sure which version this is.
22 It goes to 2011 it looks like.
Page 25

Pages 22 to 25

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. Company org charts, sliced and diced
2 different ways. It may very well be the org chart
3 today, you're on it, and I don't know why -- this
4 was produced it looks like late 2011. This is
5 just the way it was produced to us.
6 A. Okay.
7 Q. So basically you've seen org charts where
8 you're a box underneath Jim Shuck.
9 Is that fair?
10 A. Yes.
11 Q. Okay. That's where I would have put you.
12 But you're the one with the knowledge, not me.
13 It's helpful to hear you say that.
14 Glidewell Direct is, in a sense, an
15 aspect of the advertising and marketing efforts of
16 Glidewell. Is that fair?
17 A. That is.
18 Q. And you don't report to -- I'm just
19 looking at the org chart -- the other people below
20 Mr. Shuck. I see a Michael Cash, there's
21 Dr. DiTolla, there's a Dwight Brown.
22 A. I do not report to them.

Page 26

1 Q. Do you report to Mr. Shuck?
2 A. No, I don't.
3 Q. Do you report to Mr. Glidewell?
4 A. No, I don't.
5 Q. Who do you report to?
6 A. I report to Tim Torbenson. He's not on
7 the list either.
8 Q. He's not on there either.
9 A. He's a new addition to the team.
10 Q. What's his title?
11 A. Director of sales and marketing and
12 business development.
13 Q. And his name is Tim?
14 A. Tim.
15 Q. What's his last name?
16 A. Torbenson, T-o-r-b-e-n-s-o-n.
17 Q. He's not on here either. Okay.
18 Would you expect his box to be underneath
19 Jim Shuck as well?
20 A. Probably not.
21 Q. Would he -- why do you say that? Where
22 would you expect him to be?

Page 27

1 A. He would report to Dave Casper who
2 reports to Greg Minzenmayer.
3 Q. Casper, C-a-s-p-e-r?
4 A. He's on the list here under Greg
5 Minzenmayer.
6 Q. Oh, yes. VP sales and business
7 development.
8 So underneath Dave Casper, there could be
9 a box with Tim Torbenson?
10 A. Correct.
11 Q. Okay. And you report to Tim?
12 A. Yes.
13 Q. Okay. Actually, that brings up a
14 question for me as well which is sales and
15 business development here is underneath the COO of
16 the company as opposed to the VP of advertising
17 and marketing. Do you have an understanding for
18 why the org chart is laid out that way?
19 A. I'm not sure, no.
20 Q. So Glidewell Direct -- is David Casper
21 associated with Glidewell Direct as well?
22 A. Yes.

Page 28

1 Q. Is he the highest up person associated
2 with Glidewell Direct?
3 A. Yes.
4 Q. You have employees working under you;
5 correct?
6 A. I do.
7 Q. How many?
8 A. About ten.
9 Q. And what do those employees do?
10 A. There's two types of employees. There's
11 an in-bound telesales support team that are
12 obviously there to answer the phone and support
13 our customers, and there's also an out-bound
14 effort which is focusing on our in-plant product
15 line.
16 Q. So outbound meaning what?
17 A. Sales. All sales driven, reaching out to
18 the customer letting them know what's new and
19 different about our product. More of a sales
20 effort as opposed to a support.
21 Q. And that's specific you said to the
22 implant products?

Page 29

Pages 26 to 29

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. Correct.
 2 Q. That doesn't apply so much as to, say,
 3 the milling blocks and zirconia?
 4 A. No, that's not their focus.
 5 Q. So when you started at Glidewell, was
 6 your title the same as it is right now?
 7 A. It is.
 8 Q. Okay. So you've been the sales manager,
 9 then, since January, 2009?
 10 A. Yes.
 11 Q. And Glidewell Direct is run out of Orange
 12 County office; correct?
 13 A. It's in Irvine on the Von Karman
 14 building.
 15 Q. I think you already testified Glidewell
 16 Direct has been around before you joined
 17 Glidewell?
 18 A. Yes.
 19 Q. Okay. Who was it at Glidewell who hired
 20 you?
 21 A. Jim Shuck. I have to think about that,
 22 but yeah, I reported to him.

Page 30

1 Q. And how was the job described to you when
 2 you were hired? What were you being hired to do?
 3 A. Manage the sales efforts of the Glidewell
 4 Direct group which has two functions: One, the
 5 traditional sales of products like blocks and
 6 equipment, and also support the outsourcing
 7 options that we offer the laboratories such as
 8 milling services.
 9 Q. Of course, one big function of Glidewell
 10 is functioning as a dental lab itself; correct?
 11 A. Correct. That's the lion's share.
 12 Q. That's the lion's share.
 13 Is that separate from Glidewell Direct?
 14 A. Yes.
 15 Q. So the dental lab is one aspect, and then
 16 Glidewell Direct is a separate aspect?
 17 A. Correct. The focus is more on the
 18 laboratories, but we do sell a few products that a
 19 dentist would use as well. We have nothing to do
 20 with the production of crowns.
 21 Q. All right. And so for the lion's share
 22 of Glidewell's work which is being a dental lab,

Page 31

1 their customers are dentists; correct?
 2 A. Yes.
 3 Q. And for Glidewell Direct, most of the
 4 customers are dental labs; is that correct?
 5 A. That is correct.
 6 Q. Okay. As you said, you do have some
 7 products that can go directly to dentists as well?
 8 A. Yes.
 9 Q. That's like equipment?
 10 A. No, it's impression materials, shade
 11 guides, little accessories. There's some
 12 equipment.
 13 Q. The equipment the labs use is different
 14 than the equipment the dentists use?
 15 A. Sometimes it's the same, but there's one
 16 in particular. There's a mouth guard machine and
 17 both labs and dentists can use that machine.
 18 Q. I think I noticed on Glidewell's website
 19 you can click on a tab for dentist -- I think they
 20 call it dentist?
 21 A. Yes.
 22 Q. You can click on a tab for laboratories?

Page 32

1 A. Correct.
 2 Q. And it brings up a different suite of
 3 services and products?
 4 A. Yes.
 5 Q. Okay. Has the scope of your
 6 responsibility changed since you've been at
 7 Glidewell since 2009?
 8 A. It has not.
 9 Q. And so in January, 2009, when you
 10 started, what products were being sold to the
 11 dental labs by Glidewell Direct at that time?
 12 A. Dental porcelains. A lot of dental
 13 porcelains in different shapes with different
 14 types of restorations. That was pretty much the
 15 bulk of it in the beginning. We sell some
 16 equipment, scanners and things of that nature.
 17 And, of course, after the launch of the BruxZir
 18 blocks, we also sold milling machines.
 19 Q. And the BruxZir blocks, I'm going to ask
 20 you about in a little bit -- what I'm going to do
 21 when I talk about Glidewell's mark, there's an
 22 issue in this case obviously about the trademark

Page 33

Pages 30 to 33

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 BruxZir, and you're obviously aware of that. I'm
2 going to refer to that as BruxZir just so that
3 it's clear what I'm referring to. So the BruxZir
4 blocks you were just talking about, these are like
5 the milling pucks that are provided to
6 laboratories; correct?
7 A. That is correct.
8 Q. Okay. And Glidewell was not yet selling
9 BruxZir blocks to laboratories in January, 2009;
10 correct?
11 A. No, they were not.
12 Q. Do you recall when they started?
13 A. That summer. June. It's a guess but in
14 that time frame.
15 Q. Your recollection is summer of 2009?
16 A. Summer of 2009.
17 Q. And I think you also made reference to
18 milling machines associated with the BruxZir
19 blocks; correct?
20 A. Correct.
21 Q. Do you know when Glidewell started
22 selling milling machines associated with that
Page 34

1 product?
2 A. There was other milling machines that we
3 were selling before, but with the launch of the
4 BruxZir blocks, we also added a new milling
5 machine which was the BruxZir mill.
6 Q. And that also had the same BruxZir name
7 associated with it?
8 A. Yes, correct.
9 Q. Was that milling machine being offered
10 for sale at the same time as the BruxZir blocks
11 were first offered for sale or later?
12 A. It probably came a little later. I'm not
13 exactly sure. It took a little while to develop
14 the product and fine tune it; so there probably
15 would have been a few months delay between the
16 first and the second. There were other machines
17 that could mill our blocks before we had our own.
18 Q. And you sold those machines as well?
19 A. Yeah, we did. It's called an Inteletok
20 mill.
21 Q. How is Inteletok spelled?
22 A. I-n-t-e-l-e-t-e-k. Inteletok.
Page 35

1 Q. So that's a milling machine you would
2 purchase from somebody else, but you'd make it
3 available?
4 A. Correct.
5 Q. Do you still sell the Inteletok mill
6 today?
7 A. No, we do not.
8 Q. Did you discontinue that when you brought
9 on the BruxZir milling machines?
10 A. Yes.
11 Q. And how about sintering machines for the
12 BruxZir blocks, that's something that's sold by
13 Glidewell today?
14 A. That's correct.
15 Q. And that's sold by Glidewell Direct?
16 A. Yes, it is.
17 Q. Do you know when Glidewell Direct started
18 selling sintering machines for BruxZir blocks?
19 A. Probably before that because we had the
20 Prismatic sintering oven when we sold the
21 Inteletok mills. So that predates my arrival.
22 I'm not exactly sure when we started selling
Page 36

1 those.
2 Q. How do you spell Prismatic?
3 A. P-r-i-s-m-a-t-i-k.
4 Q. And that was an oven that was already for
5 sale when you started at Glidewell?
6 A. That's correct.
7 Q. That's a product Glidewell would have
8 purchased and then made available?
9 A. Yes.
10 Q. Okay. And does Glidewell sell the
11 Prismatic oven today?
12 A. Yes, it does.
13 Q. So in this case, because I think today
14 Glidewell also sells a BruxZir sintering machine?
15 A. Called a Fast Fire, yes.
16 Q. So there's multiple ovens that are for
17 sale that can be used, for example, with BruxZir
18 block; is that accurate?
19 A. Yes, that is true.
20 Q. So, for example, when you started in
21 January, 2009, one of the things you were a sales
22 manager for was the sale of these Inteletok mills?
Page 37

Pages 34 to 37

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. Yes.
2 Q. And also these PrismaTik ovens?
3 A. Yes.
4 Q. Okay. Now, at some point, I think
5 Glidewell Direct also started selling coloring
6 kits associated with its BruxZir blocks. Is that
7 accurate?
8 A. Yes.
9 Q. Do you know when Glidewell Direct started
10 selling those?
11 A. It would have been at the time of the
12 launch of the blocks, the BruxZir coloring
13 liquids. You can't really have one without the
14 other.
15 Q. Okay. And was Glidewell selling coloring
16 kits at the time you started maybe not specific to
17 BruxZir but for other products?
18 A. They must have because we sold other
19 blocks. So there must have been another version
20 of dipping solutions.
21 Q. And when you started in 2009, do you
22 recall what kind of blocks were sold by Glidewell
Page 38

1 at that time?
2 A. Those were PrismaTik blocks.
3 Q. Were there any other kinds?
4 A. No.
5 Q. And PrismaTik blocks are made of what
6 material?
7 A. It's also made out of zirconia.
8 Q. Did Glidewell Direct, again, back in
9 January, 2009, did they sell blocks associated
10 with materials other than zirconia? And maybe
11 blocks isn't the right word, but did they sell
12 materials to labs?
13 A. Yes, but not out of blocks. We're going
14 back to the porcelain powders and ingots for
15 pressing porcelain.
16 Q. And if it's not blocks, what do you call
17 what is sold when it's a porcelain back in
18 January, 2009?
19 A. I guess you'd call it a porcelain jar
20 because they're typically on a little plastic
21 bottle, and it's just ceramic powder that's
22 stacked, or it's ingots that are used in the
Page 39

1 pressing technique. There's different
2 applications depending on where it's going to be
3 used.
4 Q. So it could be in the form of powder or
5 in the form of ingots?
6 A. Correct.
7 Q. Do you recall what in January, 2009, what
8 are the different types of porcelain that
9 Glidewell Direct was selling?
10 A. There's quite a few. There's thin press
11 porcelain. There's net press, PrismaTik
12 porcelains, but they all fall in that category of
13 either being a powder or an ingot.
14 Q. And can the thin press porcelain that
15 you're referring to, is that a porcelain that
16 Glidewell Laboratories was manufacturing?
17 A. Thin press, no. We resold.
18 Q. Okay. So you purchased that and resold
19 it?
20 A. Correct.
21 Q. How about net press?
22 A. I believe that's the same.
Page 40

1 Q. And PrismaTik was also one you purchased
2 and resold?
3 A. Yes.
4 Q. And you mentioned that there was
5 PrismaTik zirconia, but you're also saying there
6 was PrismaTik powder as well?
7 A. Uh-huh.
8 Q. Which was not zirconia?
9 A. Correct.
10 Q. And what kind of ceramic was that?
11 A. Well, at that time, the zirconia was used
12 as a substructure, and then the technician would
13 layer the porcelain on top of it; so instead of
14 having a metal substructure, you have a ceramic
15 substructure that was strong enough, and then you
16 would build the porcelain on top. So it was a
17 two-step process.
18 Q. And is there any -- what word would we
19 use to describe the type of porcelain which was on
20 top?
21 A. It's a zirconia-friendly porcelain that's
22 compatible with the zirconia substructure.
Page 41

Pages 38 to 41

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 Q. Is it like a feldspathic?</p> <p>2 A. It's a feldspathic structure, yes.</p> <p>3 Q. There's another product call e.max. Are</p> <p>4 you familiar with that?</p> <p>5 A. Yes.</p> <p>6 Q. It's an e and a dot and m-a-x?</p> <p>7 A. Correct.</p> <p>8 Q. Was Glidewell Direct selling e.max to</p> <p>9 labs in 2009 when you started?</p> <p>10 A. No. We don't sell e.max.</p> <p>11 Q. I think that is a substance that's used</p> <p>12 by the dental lab part --</p> <p>13 A. Absolutely.</p> <p>14 Q. -- of Glidewell?</p> <p>15 A. That's a very well known product, and</p> <p>16 it's growing nicely, yes.</p> <p>17 Q. But Glidewell Direct doesn't deal with</p> <p>18 that?</p> <p>19 A. We don't sell those, no.</p> <p>20 Q. How about the product Lava?</p> <p>21 A. We don't sell that.</p> <p>22 Q. Okay. So in the summer of 2009,</p> <p style="text-align: right;">Page 42</p>	<p>1 A. Well, there's a lot of accessories that</p> <p>2 go along with that. Is that what you're asking?</p> <p>3 Q. Yes.</p> <p>4 A. There's sintering trays, sintering beads</p> <p>5 that I used in the sintering oven. In order to</p> <p>6 design the cases, you need a 3Shape scanner; so we</p> <p>7 sell those as well. So it's a package where you</p> <p>8 need the CAM and the CAD in order to complete a</p> <p>9 full BruxZir restoration.</p> <p>10 Q. And so the 3Shape scanner you're talking</p> <p>11 about, that's associated with a CAD/CAM process?</p> <p>12 A. Correct.</p> <p>13 Q. What equipment is needed for or does</p> <p>14 Glidewell Direct offer in connection with CAD/CAM?</p> <p>15 A. It's pretty much the ones we described.</p> <p>16 So you start with the scanner. Once you design</p> <p>17 the case, it's going to be sent to the mill to be</p> <p>18 milled. After it's milled, it's going to be</p> <p>19 colored, and after it's colored, it's going to</p> <p>20 sintered. Once it's sintered, it's going to be</p> <p>21 stained and glazed and sent to the dentist.</p> <p>22 Q. And so Glidewell Direct provides the</p> <p style="text-align: right;">Page 44</p>
<p>1 Glidewell Direct had a suite of new products</p> <p>2 associated with the name BruxZir. Is that fair?</p> <p>3 A. That is fair.</p> <p>4 Q. And so the products that Glidewell Direct</p> <p>5 was selling expanded to include these products;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And that would have included, I</p> <p>9 think we've already talked about it, milling</p> <p>10 blocks; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And it would have included milling</p> <p>13 machines?</p> <p>14 A. Yes.</p> <p>15 Q. And it would have included sintering</p> <p>16 ovens?</p> <p>17 A. Yes.</p> <p>18 Q. And it would have included coloring kits?</p> <p>19 A. Correct.</p> <p>20 Q. Are there any other products you can</p> <p>21 think of associated with the BruxZir product that</p> <p>22 was being sold by Glidewell Labs?</p> <p style="text-align: right;">Page 43</p>	<p>1 equipment for a lab to buy all that, put it in</p> <p>2 their dental lab, and now they can buy BruxZir</p> <p>3 blocks and then create crowns, for example, with</p> <p>4 them using the equipment?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Does Glidewell Direct provide,</p> <p>7 like, a discount if you buy the whole package?</p> <p>8 A. Not really. There may be some concession</p> <p>9 if they buy more than one, but our pricing is</p> <p>10 pretty attractive as it is. There's not a whole</p> <p>11 lot of discounting going on.</p> <p>12 Q. How have sales been of the milling</p> <p>13 machines between 2009 and 2012?</p> <p>14 A. Very good. It's a great product.</p> <p>15 Q. They've been increasing every year?</p> <p>16 A. Yes.</p> <p>17 Q. And same answer for sintering ovens?</p> <p>18 A. Yes. They're all linked. It's not the</p> <p>19 only source, but a lot of times people like buying</p> <p>20 the complete system.</p> <p>21 Q. But they don't have to buy the complete</p> <p>22 system; right?</p> <p style="text-align: right;">Page 45</p>

Pages 42 to 45

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. No, they don't. There's other sintering</p> <p>2 ovens. There's other mills.</p> <p>3 Q. Now, as a sales manager for Glidewell</p> <p>4 Direct, what was your role in promoting the</p> <p>5 BruxZir products that Glidewell Direct started</p> <p>6 selling in 2009?</p> <p>7 A. My role was to find new customers that</p> <p>8 wanted to buy the products from Glidewell</p> <p>9 Laboratories and offer the BruxZir brand of full</p> <p>10 contour zirconia restorations to their doctors.</p> <p>11 Q. Okay. And just to be clear, the</p> <p>12 customers you're talking about are dental labs;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And how many dental labs buy</p> <p>16 BruxZir milling blocks today?</p> <p>17 A. There's about 185 authorized BruxZir</p> <p>18 laboratories on our list. I say about because it</p> <p>19 fluctuates. We add a few. Some may come off the</p> <p>20 list.</p> <p>21 Q. And adding a few is exactly what your job</p> <p>22 is; right?</p> <p style="text-align: right;">Page 46</p>	<p>1 it's established they're no longer using our</p> <p>2 product, we will remove them from the BruxZir</p> <p>3 authorized list.</p> <p>4 Q. Because I can imagine -- do most labs buy</p> <p>5 product every month, or how often are they buying</p> <p>6 it?</p> <p>7 A. Most labs do. If you have a milling</p> <p>8 machine, it's a big investment, and you would want</p> <p>9 to keep that mill busy. It's not uncommon to get</p> <p>10 regular orders from a BruxZir mill customer.</p> <p>11 Q. And so what would catch the attention of</p> <p>12 the review process is if they went several months</p> <p>13 without buying product?</p> <p>14 A. No, it would be sooner than that.</p> <p>15 Typically, they buy every month. You would notice</p> <p>16 a decline within a month. Certainly maybe you</p> <p>17 miss one, but within two months, it would be</p> <p>18 pretty obvious that they've either switched or</p> <p>19 doing something else.</p> <p>20 Q. And who's monitoring to see whether</p> <p>21 they're buying product or not?</p> <p>22 A. I monitor it sometimes, and some of my</p> <p style="text-align: right;">Page 48</p>
<p>1 A. Yes.</p> <p>2 Q. You're always trying to add more?</p> <p>3 A. Absolutely.</p> <p>4 Q. Why do labs come off the list?</p> <p>5 A. If they no longer purchase the materials</p> <p>6 from Glidewell Direct, we will remove them from</p> <p>7 the list.</p> <p>8 Q. And is there, like, a time frame after a</p> <p>9 certain amount of time they're not buying the</p> <p>10 milling blocks they get removed? How does that</p> <p>11 work?</p> <p>12 A. There's a review process making sure that</p> <p>13 the orders are coming in on a regular basis.</p> <p>14 There's no set number or timeline, but if we</p> <p>15 notice a sharp decline in the ordering pattern, we</p> <p>16 will give them a call and ask what is going on.</p> <p>17 Sometimes it just happens that the timing of the</p> <p>18 order is such that it appears they have stopped</p> <p>19 use and they have not, or they placed a large</p> <p>20 order and still have stock, and other times they</p> <p>21 may decide to go with a less expensive alternative</p> <p>22 and they no longer buy the blocks from us. Once</p> <p style="text-align: right;">Page 47</p>	<p>1 colleagues help me out as well because I'm not</p> <p>2 always there to do the monitoring. Especially the</p> <p>3 inbound team. They deal with the customer on a</p> <p>4 regular basis and know them very well, and they're</p> <p>5 probably the first ones to notice if somebody</p> <p>6 hasn't placed an order in a while.</p> <p>7 Q. I'm sorry. I didn't catch who would be</p> <p>8 the first ones to notice?</p> <p>9 A. The inbound group.</p> <p>10 Q. The inbound group. I'm sorry.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. How is it they notice? Just by</p> <p>13 whether they're getting an order?</p> <p>14 A. Exactly. A good customer will call on a</p> <p>15 regular basis; so they have a relationship</p> <p>16 established with our sales representatives --</p> <p>17 they're not sales representative but inbound</p> <p>18 customer support team. So it might come to their</p> <p>19 attention that they haven't heard from a</p> <p>20 particular customer in a while, but we also run</p> <p>21 reports just to see what the sales are, and that's</p> <p>22 another way to track it.</p> <p style="text-align: right;">Page 49</p>

Pages 46 to 49

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 Q. You can just run a report which is sales</p> <p>2 by lab, for example?</p> <p>3 A. Yes.</p> <p>4 Q. And how is it that these dental labs</p> <p>5 order the milling blocks? What's the process for</p> <p>6 ordering it?</p> <p>7 A. They call us up, tell us how many blocks</p> <p>8 they need and what color ingots they need and any</p> <p>9 other accessories they need. A simple phone</p> <p>10 process. If they'd like, they can do it online as</p> <p>11 well. They can place an order through the</p> <p>12 Internet. We try to make it as easy and</p> <p>13 convenient as possible.</p> <p>14 Q. And doing it over the Internet, is there,</p> <p>15 like, an intranet that they have access to?</p> <p>16 A. No. They just place it through D order</p> <p>17 here. If you've been to our website, which I</p> <p>18 guess you have, you can place an order online. It</p> <p>19 will come to Glidewell Direct. We'll fulfill it</p> <p>20 the normal way, we just don't get a phone call.</p> <p>21 Q. I have been to the website. I do recall</p> <p>22 seeing places for labs to click. I guess what I'm</p> <p style="text-align: right;">Page 50</p>	<p>1 transferred to an answering machine. It's quite</p> <p>2 common for them to pick up the phone as opposed to</p> <p>3 go to the computer.</p> <p>4 Q. Some products like the sintering ovens or</p> <p>5 milling machines are not repeat purchases</p> <p>6 typically; right, you buy it for your lab and you</p> <p>7 have it?</p> <p>8 A. Exactly.</p> <p>9 Q. And then other ones are being used up and</p> <p>10 you keep replenishing it?</p> <p>11 A. Yes.</p> <p>12 Q. That would include the milling blocks, it</p> <p>13 would include coloring --</p> <p>14 A. Liquids.</p> <p>15 Q. -- liquids and other things. So I guess,</p> <p>16 when they're calling in, they're ordering usually,</p> <p>17 sometimes anyway, several of those things. Is</p> <p>18 that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Now, you said there was a review process</p> <p>21 and a decision -- somebody's going to make a</p> <p>22 decision whether you need to call a lab because,</p> <p style="text-align: right;">Page 52</p>
<p>1 wondering is do they log in to, like, a nonpublic</p> <p>2 area? Do they go through a portal with username</p> <p>3 password?</p> <p>4 A. To place the order, no, they don't have</p> <p>5 to do that.</p> <p>6 Q. Do you have a sense for how much of the</p> <p>7 ordering is done over the telephone versus over</p> <p>8 the Internet?</p> <p>9 A. Oh, the lion's share is still done</p> <p>10 through the telephone.</p> <p>11 Q. That surprises me just in the sense that</p> <p>12 obviously you want the order to be precise, but, I</p> <p>13 guess, they'll call in and they can give the</p> <p>14 shades of the milling blocks and the people record</p> <p>15 it and then process the order?</p> <p>16 A. Yeah. I mean there's also a confident</p> <p>17 zone of dealing with somebody you know as opposed</p> <p>18 to the more impersonal Internet aspect. They know</p> <p>19 the people they deal with. They've dealt with</p> <p>20 them for a long time. Most of the customers will</p> <p>21 pick up the phone and they know somebody will</p> <p>22 answer the phone. They're not going to be</p> <p style="text-align: right;">Page 51</p>	<p>1 say, they're not ordering product at all. Who's</p> <p>2 involved in that review process?</p> <p>3 A. I'm involved.</p> <p>4 Q. Who else?</p> <p>5 A. Rozy Setoodegan.</p> <p>6 Q. Anybody else?</p> <p>7 A. No.</p> <p>8 Q. So this decision to remove a lab from a</p> <p>9 list for not purchasing product, does that have to</p> <p>10 get escalated any higher, or is it just you and</p> <p>11 Rozy would be making that decision?</p> <p>12 A. It doesn't have to be escalated.</p> <p>13 Q. So you and Rozy have -- first of all, is</p> <p>14 the decision yours or Rozy's decision?</p> <p>15 A. It would be mine.</p> <p>16 Q. It would be yours.</p> <p>17 Do you recall how many labs you've</p> <p>18 removed from the list between 2009 and today?</p> <p>19 A. It's a guess. A few.</p> <p>20 Q. Not very many?</p> <p>21 A. No. It's not a very common occurrence.</p> <p>22 It does happen, but it's not frequent.</p> <p style="text-align: right;">Page 53</p>

Pages 50 to 53

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. Do you recall any dental labs by name
2 that have been removed from the list?
3 A. No, I don't.
4 Q. I think you said somebody will call them
5 up and talk to them and say, "Why have you stopped
6 buying product"; right?
7 A. Yes.
8 Q. In the instances where these labs have
9 been dropped from the list for not buying product,
10 do you have an understanding of why they stopped
11 buying the product?
12 A. Maybe they want to buy a less expensive
13 product. Maybe they decided to invest in a
14 different system. There's a lot of reasons why
15 they might do so.
16 Q. For those instances that you're talking
17 about, you don't have a recollection as to what
18 the reason was?
19 A. No. Oftentimes it's buying a less
20 expensive product.
21 Q. What's an example of a less expensive
22 zirconia product?

Page 54

1 A. Well, there are zirconias from China that
2 are significantly less expensive than ours.
3 They're also of lower quality, but that's a
4 decision the lab makes.
5 Q. And then I assume in that phone call, an
6 effort is made to keep the lab, you know, in the
7 Glidewell family, so to speak; correct?
8 A. We try.
9 Q. You're in business to be selling
10 products.
11 A. Sure. We want to see if there's anything
12 we can do differently to keep them.
13 Q. Right.
14 Because losing a lab off of the list is
15 losing a customer. You don't want to lose your
16 customers?
17 A. Exactly.
18 Q. Just like any other business?
19 A. Yes. If we can avoid it, we try.
20 Q. Aside from these few instances where
21 these labs have stopped purchasing product, are
22 there any other reasons why labs have been dropped

Page 55

1 from the list of authorized Glidewell Labs?
2 A. Our main focus is on the sales aspect.
3 We do a lot of promoting of the BruxZir brand, and
4 that list benefits from quarterly mailings and a
5 lot of support; so we want to make sure the people
6 that are on the list are indeed providing their
7 customers with the genuine BruxZir materials and
8 are following the correct technique.
9 So if they're not buying the materials or
10 they're not following the technique, those would
11 be reasons to have a conversation with them. And
12 if they opt to not follow those steps, we would
13 then remove them from the list.
14 Q. Now, who is it who looks into whether the
15 techniques are being followed?
16 A. Well, if the results -- well, it's hard
17 to validate, but if they buy blocks and they don't
18 buy liquids, or if there's a discrepancy between
19 one or the other, we want to make sure that they
20 are giving the best possible product as ours has
21 better strengths, better translucency, better
22 aesthetics. We want to make sure our brand is

Page 56

1 protected; so people don't think they're getting
2 one thing and then decide it doesn't look that
3 good when, in fact, they didn't get a BruxZir
4 crown.
5 Q. What I'm asking is, is it your group
6 that's paying attention to the product or the
7 techniques that's being performed by the
8 authorized labs?
9 A. We focus on the sales of those items. If
10 the blocks are not there, it's a clear indication
11 that they're not using our product. But also if
12 the liquids are missing, that would be a red flag
13 that maybe they're not using the full system.
14 Q. Do you have a recollection for when the
15 authorized lab program began?
16 A. I don't have a good timeline but shortly
17 after our launch, we introduced that. At the
18 time, it was a small list basically of our
19 laboratories, but maybe one or two outside
20 laboratories. So it's grown nicely.
21 Q. When you say "after our launch," you mean
22 the launch of the BruxZir suite of products?

Page 57

Pages 54 to 57

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. Correct.
2 Q. Okay. And why did Glidewell begin this
3 authorized lab program?
4 A. Well, we're a sales organization. So
5 while we use a lot of blocks, I don't sell blocks
6 to the internal customers; so we're trying to
7 reach out to more customers. So in order to
8 attract them to our line, we offer not only a
9 great product but also a strong marketing campaign
10 to help promote the laboratory services to their
11 accounts. So it was a win-win. The customers
12 benefited, and we enjoyed greater sales.
13 Q. Because it's a different business model
14 than just selling them zirconia; correct?
15 A. Yes.
16 Q. And I think, as you just said, one thing
17 you provide for the labs, I guess, is the
18 marketing strength of Glidewell and Glidewell's
19 marketing campaign, I think you called it; right?
20 A. Yes.
21 Q. Okay. What does a lab do to become an
22 authorized lab of Glidewell?

Page 58

1 A. They need to buy BruxZir blocks on a
2 regular basis, BruxZir coloring liquids on a
3 regular basis, and that's how they get into the
4 system. In order to stay, we need to see a steady
5 flow of orders.
6 Q. Do they pay any kind of royalty?
7 A. Nope.
8 Q. An authorized lab can still sell zirconia
9 crowns made from zirconia purchased elsewhere
10 other than Glidewell; correct?
11 A. Absolutely.
12 Q. Who at Glidewell makes the decision to
13 add a lab as an authorized lab?
14 A. I would.
15 Q. So that would be your job?
16 A. Yes.
17 Q. And if I look in Glidewell's website, for
18 example, I can find a listing of the authorized
19 labs; right?
20 A. Yes.
21 Q. If a lab is going to get mentioned, it's
22 because you've agreed, "Hey, update the list"?

Page 59

1 A. Correct.
2 Q. Okay. Do you remember the last time a
3 lab was removed from the list?
4 A. No, I don't.
5 Q. And I think you said before that a lab
6 who's purchasing the milling blocks but not
7 purchasing the coloring liquids would be an
8 example of a lab that might get removed from the
9 list; correct?
10 A. It's a possibility, yes.
11 Q. Has that ever happened, or are you just
12 giving --
13 A. No, you asked me what other ways could a
14 lab be removed. That could be one of them.
15 Q. Has a lab ever been removed for that
16 reason?
17 A. No. Typically, they buy the system
18 that's linked and proven to work.
19 Q. To your knowledge, has a lab been removed
20 for any reason other than not purchasing product
21 from Glidewell?
22 A. No.

Page 60

1 Q. So what benefits does a lab get by
2 becoming an authorized lab of Glidewell?
3 A. Well, the first benefit is they get added
4 to the dedicated BruxZir.com website where their
5 lab will be listed. The next benefit is that they
6 get to participate in the quarterly Rx booklet
7 campaign which basically happens once a quarter.
8 We reach out to all 120,000 doctors across the
9 U.S. and send them an Rx booklet that lists all
10 the authorized laboratories, encourages them to
11 use our prescription, and send it to one of the
12 laboratories listed on that flyer, and we do
13 E-blasts. We do letter campaigns. We do a lot of
14 different things to bring the awareness of the
15 BruxZir brand and its benefits and what makes it
16 better. So they participate in all of that at no
17 cost to them.
18 Q. And so, again, these are -- these
19 benefits are marketing benefits --
20 A. Yes.
21 Q. -- to the lab. Right.
22 Now, Glidewell benefits when it adds a

Page 61

Pages 58 to 61

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 new lab because now they have another customer for</p> <p>2 its BruxZir products; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Does Glidewell benefit in any</p> <p>5 other ways other than obviously they can sell more</p> <p>6 products if they add more labs?</p> <p>7 A. No, that's the main benefit, getting a</p> <p>8 new customer. And obviously the more people on</p> <p>9 the list, the better it is for sales, but also</p> <p>10 it's better for the brand recognition. It's not</p> <p>11 just Glidewell Laboratories offering BruxZir</p> <p>12 crowns. It's offered by a large number of</p> <p>13 laboratories across the country which gives a</p> <p>14 dentist more choices to get the genuine article.</p> <p>15 Q. And when you say "BruxZir crowns" like</p> <p>16 that, what does that mean to you? What's a</p> <p>17 BruxZir crown to you?</p> <p>18 A. To me, it's a monolithic restoration made</p> <p>19 with the BruxZir brand of blocks which are</p> <p>20 processed and manufactured differently than</p> <p>21 anybody else's blocks out there. There are other</p> <p>22 alternatives. You can make a crown with another</p> <p style="text-align: right;">Page 62</p>	<p>1 A. Occasionally, but that would be more of a</p> <p>2 technical question. They may ask if indeed this</p> <p>3 is looking the way it should or how can they</p> <p>4 improve the aesthetics, and we may help them like</p> <p>5 we talked about before. We want authorized labs</p> <p>6 to offer the same product we do and offer the same</p> <p>7 translucency and same aesthetic benefits.</p> <p>8 If they have questions about how to</p> <p>9 improve their output, we will certainly do our</p> <p>10 best to help them. But we don't have a monitoring</p> <p>11 system.</p> <p>12 Q. Right.</p> <p>13 So it's in response to them contacting</p> <p>14 Glidewell that this would happen?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And who within Glidewell would</p> <p>17 help them?</p> <p>18 A. Usually the R & D team.</p> <p>19 Q. So that's the team underneath Robin</p> <p>20 Carden; right?</p> <p>21 A. That is correct.</p> <p>22 Q. Is there any kind of, like, level of</p> <p style="text-align: right;">Page 64</p>
<p>1 block, but it wouldn't have the same strength or</p> <p>2 translucency. We have a superior product, and we</p> <p>3 promote it as such.</p> <p>4 Q. And Glidewell makes its zirconia blocks</p> <p>5 in-house; correct?</p> <p>6 A. We do.</p> <p>7 Q. Is that in Irvine?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know, is it all made in Irvine?</p> <p>10 A. All the blocks are made in Irvine, yes.</p> <p>11 Q. All the blocks are made in Irvine.</p> <p>12 To your knowledge, are there any written</p> <p>13 contracts between Glidewell and the authorized</p> <p>14 labs?</p> <p>15 A. No.</p> <p>16 Q. Do Glidewell personnel regularly inspect</p> <p>17 the premises of the facilities of the authorized</p> <p>18 labs?</p> <p>19 A. We do not.</p> <p>20 Q. And do Glidewell personnel review samples</p> <p>21 of full zirconia dental restorations made by the</p> <p>22 authorized labs using the BruxZir blocks?</p> <p style="text-align: right;">Page 63</p>	<p>1 quality that the authorized labs have to maintain</p> <p>2 to remain an authorized lab?</p> <p>3 A. No, beyond using the technique and the</p> <p>4 product. They should get similar results.</p> <p>5 Q. And how do you know if they're using the</p> <p>6 technique or not?</p> <p>7 A. For us, it's the use of blocks and the</p> <p>8 liquid. Those are the two main ingredients. It</p> <p>9 can be milled on a multitude of different</p> <p>10 machines. Our main concern is the aesthetic look</p> <p>11 of the final restoration. If it's using our block</p> <p>12 with our liquid, it should be a nice looking</p> <p>13 restoration.</p> <p>14 Q. How the milling is done is left up to the</p> <p>15 discretion of the lab. Is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And how about the sintering? That's also</p> <p>18 left up to the discretion of the lab?</p> <p>19 A. No, it has to follow the sintering cycle</p> <p>20 that's approved. It has to reach a temperature of</p> <p>21 1730 degrees Celsius. So the sintering oven needs</p> <p>22 to reach that temperature in order to get the full</p> <p style="text-align: right;">Page 65</p>

Pages 62 to 65

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 sintering and translucency that's needed.
2 Q. Is there a flexibility in timing, like,
3 how long it's in the oven?
4 A. There's flexibility in how quickly a
5 furnace can reach the temperature, but it needs to
6 spend two hours at that top temperature in order
7 to fully sinter and get the translucency you want
8 to achieve. So some furnaces, like the name
9 suggests, Fast Fire, gets it done faster, but it
10 still spends the same amount of time in the sweet
11 spot, if you will.
12 MR. TACHNER: I would like to caution the
13 witness that we have a confidentiality agreement
14 with the defendants. So if you feel that any of
15 the specifics in regard to your process are
16 confidential, you should let us know; so she can
17 mark the transcript accordingly.
18 THE WITNESS: Okay.
19 BY MR. JANKOWSKI:
20 Q. So the sintering temperature may be
21 secret or isn't secret?
22 A. It's not secret.

Page 66

1 MR. TACHNER: Thank you.
2 THE WITNESS: Thank you, Larry.
3 BY MR. JANKOWSKI:
4 Q. How is the sintering temperature or other
5 aspects of sintering, for example, conveyed to
6 these authorized labs?
7 A. We have technical bulletins, and we have
8 firing cycles that go along with the equipment.
9 Q. And when you say "technical bulletins,"
10 what do you mean by that?
11 A. Well, I mean instructions for use. It's
12 going to have the firing cycles and how to program
13 the furnace and how to reach the temperature and
14 what the heat lamp should be and what the hold
15 time should be and what the cooling time should
16 be. That's what I meant.
17 Q. If a lab approaches Glidewell to buy the
18 BruxZir milling blocks and already has its own
19 sintering oven, then it needs to know what to do;
20 correct?
21 A. Correct.
22 Q. So presumably it asks or maybe without

Page 67

1 being asked, you tell me, Glidewell will then say,
2 "This is what you do" --
3 A. Right. In order to get the best results,
4 you need to follow this firing cycle as closely as
5 possible.
6 Q. Do you know whether it varies with oven
7 to oven, or it's more dependent on the product?
8 A. No. It's just a matter of not rushing
9 it. People have a tendency to want to take things
10 out of the oven before it's cooled down, and that
11 could lead to trouble. It's a matter of following
12 what the parameters are, and if they follow it,
13 the material will sinter correctly.
14 Q. Just like chocolate chip cookies.
15 A. Just about.
16 Q. Everybody wants to eat them before
17 they're totally baked.
18 MR. TACHNER: Do you think this is a good
19 time for a break, David? It's almost 12 o'clock.
20 MR. JANKOWSKI: Absolutely. We can take
21 a break.
22 MR. TACHNER: Thank you. Off the record,

Page 68

1 I guess.
2 MR. JANKOWSKI: Yes, off the record.
3 (Recess taken from 10:52 a.m. to
4 11:08 a.m.)
5 BY MR. JANKOWSKI:
6 Q. Mr. Bartolo, you understand that you're
7 still under oath?
8 A. Yes, I do.
9 Q. Okay. Does Glidewell Labs require its
10 authorized lab to provide Glidewell with any data
11 on the returns or product defects associated with
12 dental restorations that the authorized labs
13 creates with the BruxZir blocks?
14 A. They're not required, no.
15 Q. I'd like to ask you some questions now
16 about the mark BruxZir itself.
17 A. Okay.
18 Q. You're aware that BruxZir is a name that
19 Glidewell created in the year 2009; correct?
20 A. Yes.
21 Q. And obviously we've been talking about
22 how Glidewell associates the name BruxZir with a

Page 69

Pages 66 to 69

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 suite of products; correct?
2 A. Yes.
3 Q. Okay. Are you aware that Jim Shuck is
4 the individual who came up with the name BruxZir?
5 A. Yes.
6 Q. And were you involved at all in the
7 process of naming the products?
8 A. No.
9 Q. You just heard about it after the fact?
10 A. Right.
11 Q. And how did you hear about it?
12 A. I just heard that that's the name that
13 Mr. Shuck came up with, and seemed to be a great
14 name. I mean I'm aware that other names had been
15 tossed about, but it seemed like that was the best
16 fit.
17 Q. Were you included on a group of people to
18 consider candidate names or give feedback?
19 A. No.
20 Q. Okay. And I think you said that you have
21 an associate's degree in dental technology;
22 correct?

Page 70

1 A. Yes.
2 Q. Okay. So you've been aware of the term
3 "bruxer," as a term for somebody with bruxism
4 going way back to dental -- your associate's
5 degree. Is that fair?
6 A. Yes.
7 Q. When you heard the name BruxZir, what was
8 your thinking on the connection with bruxism,
9 bruxers, or bruxing?
10 A. Well, the connection is very strong.
11 Here we're promoting a product that's virtually
12 indestructible, and it's known that patients that
13 suffer from bruxism typically will wear whatever
14 restorations they have, if not break them all
15 together. So now we had a material that's
16 aesthetically pleasing and more so than the
17 alternatives they would have, either cast gold
18 crown or porcelain veneer on a metal occlusal
19 restoration. So here you had something that
20 looked like a tooth and yet was strong enough to
21 withstand even patients that would brux at night
22 or during the day. So it was a great name to

Page 71

1 convey strength.
2 It's not limited to those applications,
3 but it certainly worked well with the combination
4 of the Zir for zirconia. So I think it's a great
5 name.
6 Q. You recognized that connection when you
7 first saw the name; correct?
8 A. No, because there were no other products
9 that combined zirconia in that use; so it was
10 clever, but there's a process that leads you
11 there. Initially, they were looking for a name
12 that was conveying strength. So it was an
13 interesting combination of those features and the
14 application that it was used for.
15 Q. The combining of zirconia crown that can
16 be used or -- strike that.
17 A name that's describing a zirconia crown
18 that's strong enough for a bruxer. Is that fair?
19 A. Yeah, that's fair.
20 Q. And in terms of pronunciation, do you
21 think BruxZir and bruxer, a patient suffering from
22 bruxism, are they pronounced the same?

Page 72

1 A. No, they sound similar, but they're not
2 pronounced the same. You referred to it BruxZir;
3 so it's BruxZir as opposed to bruxer. I know it's
4 close.
5 Q. Close but, to you, they're slightly
6 different?
7 A. Yeah.
8 Q. How about when you've heard other people
9 at Glidewell pronounce it? Do they pronounce it
10 bruxer, a bruxism patient, differently than
11 BruxZir?
12 A. I would say yes. We're aware of the
13 difference; so we certainly call it by BruxZir.
14 Some people call it BruxZir; so there's different
15 pronunciations, but they don't call it bruxer.
16 Q. When you say "BruxZir," who pronounces it
17 BruxZir with the emphasis on zir?
18 A. Different people from different parts of
19 the country.
20 Q. Anybody at Glidewell?
21 A. No.
22 Q. Because I mean the zir is kind of the

Page 73

Pages 70 to 73

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 first syllable of zirconia; correct?</p> <p>2 A. Yes.</p> <p>3 Q. It's not zeerconia?</p> <p>4 A. Some people pronounce it that way, like,</p> <p>5 my name is Bartolo. There's all kinds of</p> <p>6 combinations.</p> <p>7 Q. And you're aware that Glidewell's been</p> <p>8 granted a federal registration in the mark BruxZir</p> <p>9 for use with dental products; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And do you know which dental</p> <p>12 products Glidewell has a federal registration in</p> <p>13 the mark for BruxZir?</p> <p>14 A. Which products? I'm not sure I</p> <p>15 understand the question beyond the one we're</p> <p>16 talking about.</p> <p>17 Q. We've been talking about a whole suite of</p> <p>18 products?</p> <p>19 A. Right.</p> <p>20 Q. Do you understand whether Glidewell has a</p> <p>21 registration in the name BruxZir on all of those</p> <p>22 products?</p> <p>Page 74</p>	<p>1 for its name?</p> <p>2 A. No.</p> <p>3 Q. Did you participate at all in the</p> <p>4 decisions on labeling of Glidewell's product with</p> <p>5 brand names like BruxZir?</p> <p>6 A. No.</p> <p>7 Q. Who would be doing that? Is that</p> <p>8 Mr. Shuck?</p> <p>9 A. Mr. Shuck.</p> <p>10 Q. Now, you've been identified by Glidewell</p> <p>11 as a person with knowledge of facts relating to</p> <p>12 the likelihood of public confusion in this case</p> <p>13 between the two marks that are at issue.</p> <p>14 A. Right.</p> <p>15 Q. Are you aware of that?</p> <p>16 A. I wasn't aware that I was, but I'm here</p> <p>17 today.</p> <p>18 Q. Yeah, you're here.</p> <p>19 So let me ask you: What knowledge do you</p> <p>20 have, personal knowledge, do you have of facts</p> <p>21 relating to the likelihood of public confusion</p> <p>22 between Glidewell's BruxZir mark and Keating</p> <p>Page 76</p>
<p>1 A. I would assume. I don't know this for a</p> <p>2 fact that it's tied to the product, and we've</p> <p>3 linked the accessories that are used in the</p> <p>4 fabrication of a BruxZir crown and tied it as a</p> <p>5 suite of packages. I don't think that the</p> <p>6 trademark applies to the equipment. I could be</p> <p>7 wrong, but that's my understanding.</p> <p>8 Q. When you say "you don't think the</p> <p>9 trademark applies to the equipment," what do you</p> <p>10 mean?</p> <p>11 A. We discussed that other mills can mill a</p> <p>12 BruxZir restoration. It doesn't have to be a</p> <p>13 BruxZir milling system.</p> <p>14 Q. But the milling system that Glidewell</p> <p>15 sells, they call a BruxZir milling system?</p> <p>16 A. Absolutely, yes.</p> <p>17 Q. I'm saying do you have an understanding</p> <p>18 as to whether Glidewell has a federal registration</p> <p>19 in applying the name BruxZir to a milling system?</p> <p>20 A. I'm not sure I know the answer to that.</p> <p>21 Q. Okay. Have you participated at all in</p> <p>22 Glidewell's efforts to seek trademark protection</p> <p>Page 75</p>	<p>1 Dental Arts KDZ Bruxer mark?</p> <p>2 A. It's sounds very similar to our name, and</p> <p>3 so that leads to confusion. A doctor that's</p> <p>4 writing a prescription, a bruxer expects to get a</p> <p>5 BruxZir restoration made with the Glidewell</p> <p>6 materials. It can be called many things, but if</p> <p>7 it sounds like our product, the doctor's</p> <p>8 assumption will be that he's getting a genuine</p> <p>9 BruxZir. We've spent a lot of time and money</p> <p>10 promoting that to them. In their mind, that's</p> <p>11 what they expect to get. If they're ordering a</p> <p>12 full contour zirconia by a different name, then</p> <p>13 they're not expecting ours.</p> <p>14 Q. So the confusion, in your mind, is</p> <p>15 arising because of the similarity and</p> <p>16 pronunciation between BruxZir and the bruxer in</p> <p>17 Keating's mark?</p> <p>18 A. Right.</p> <p>19 Q. Are you aware of any examples of people</p> <p>20 being confused between those two marks? I'm</p> <p>21 asking for your personal knowledge, not that</p> <p>22 you've heard through the grapevine.</p> <p>Page 77</p>

Pages 74 to 77

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. Yes. I mean doctors expect a BruxZir</p> <p>2 crown when they request a BruxZir crown, and so if</p> <p>3 it's called something else that sounds like it,</p> <p>4 they assume they're getting the Glidewell product.</p> <p>5 Not everybody checks to see if Keating Dental Arts</p> <p>6 is on the authorized list.</p> <p>7 Q. Do you have any experience with customers</p> <p>8 of Keating Dental Arts being confused?</p> <p>9 A. Not by name. I don't know anybody that</p> <p>10 I've been on the phone with that said, "Oh, I</p> <p>11 thought so."</p> <p>12 Q. That's what I'm trying to understand.</p> <p>13 A. No, I don't have that knowledge.</p> <p>14 Q. Is there anything else other than the</p> <p>15 similar sound between the two marks in how BruxZir</p> <p>16 is pronounced or bruxer as Keating spells it, that</p> <p>17 that would be creating a likelihood of public</p> <p>18 confusion?</p> <p>19 A. Like we talked about earlier, the product</p> <p>20 is going to be different; therefore, the aesthetic</p> <p>21 results are going to different. If in a doctor's</p> <p>22 mind he's getting a BruxZir crown and the outcome</p> <p style="text-align: right;">Page 78</p>	<p>1 testified about?</p> <p>2 A. Other than that, it's not the same</p> <p>3 product and the quality is not the same. So to</p> <p>4 me, they're two totally different products, but</p> <p>5 the doctor doesn't recognize that.</p> <p>6 Q. Why doesn't he recognize that?</p> <p>7 A. Because all he's seeing in all the</p> <p>8 publications is all about the Glidewell BruxZir</p> <p>9 brand. So they are calling it by their name.</p> <p>10 Q. What about if it's a customer of Keating</p> <p>11 Dental Arts who's been buying from Keating for</p> <p>12 years? Does that change your thought process?</p> <p>13 A. Keating didn't offer that until after</p> <p>14 we've introduced the BruxZir brand.</p> <p>15 Q. How about the fact that there's a KDZ</p> <p>16 before the word "bruxer" in Keating's mark? Does</p> <p>17 that weigh into your thinking on the likelihood of</p> <p>18 confusion?</p> <p>19 A. KDZ bruxer using our blocks, that's fine.</p> <p>20 You can say it's my laboratory producing BruxZir</p> <p>21 crowns. That's not the case.</p> <p>22 Q. So Bruxer by itself you think describes a</p> <p style="text-align: right;">Page 80</p>
<p>1 is not as aesthetically pleasing, it damages our</p> <p>2 product. Not only are they confused by the name,</p> <p>3 but they're getting a lower quality product as a</p> <p>4 result of it.</p> <p>5 Q. I'm trying to understand what it is</p> <p>6 that's going to be leading to the confusion as to</p> <p>7 source. What I understand is you're saying</p> <p>8 somebody is going to think when they see Keating</p> <p>9 Dental Arts use of KDZ Bruxer, spelled</p> <p>10 B-r-u-x-e-r, that they're getting something</p> <p>11 associated with Glidewell Laboratories; correct?</p> <p>12 A. Yes.</p> <p>13 Q. I understand your statement that there's</p> <p>14 similarity in pronunciation of the words, but I'm</p> <p>15 wondering if there's anything else about the mark</p> <p>16 that you think can be confusing to people?</p> <p>17 A. I'm not sure I understand the question.</p> <p>18 What is it you'd like to know?</p> <p>19 Q. I'm trying to understand what it is you</p> <p>20 think will confuse people into thinking that</p> <p>21 Keating's product is associated with Glidewell.</p> <p>22 Anything other than the pronunciation that you</p> <p style="text-align: right;">Page 79</p>	<p>1 Glidewell product. Is that accurate?</p> <p>2 A. BruxZir does, yes.</p> <p>3 Q. I'm not saying the Z. I'm saying the way</p> <p>4 Keating spells it, B-r-u-x-e-r?</p> <p>5 A. That's a condition that somebody that's</p> <p>6 grinding their teeth. That has nothing to do with</p> <p>7 the product.</p> <p>8 Q. Right. And that's what's in Keating's</p> <p>9 product; correct?</p> <p>10 A. His mark is riding on the BruxZir brand</p> <p>11 that's been established in 2009.</p> <p>12 Q. What's your basis for saying that?</p> <p>13 A. Nobody else used that terminology before.</p> <p>14 Q. Well, there are other dental labs that</p> <p>15 have used brux in their names for crowns for</p> <p>16 bruxers; correct?</p> <p>17 A. I'm sure there is. I'm not aware of</p> <p>18 them.</p> <p>19 Q. I think you've even been cc'd on some</p> <p>20 e-mails from Mr. Allred written to other dental</p> <p>21 labs. Do you recall that?</p> <p>22 A. Yes, because they're now using the</p> <p style="text-align: right;">Page 81</p>

Pages 78 to 81

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 BruxZir terminology. But before the introduction
2 of BruxZir from Glidewell Laboratories, I'm not
3 aware of any laboratory making that connection and
4 offering a full contour zirconia for that use.
5 Q. Certainly the labs were offering crowns
6 for use with bruxers; correct?
7 A. Not to my knowledge. We were the first
8 to introduce a full monolithic restoration with
9 zirconia.
10 Q. Right. But that wasn't my question.
11 What I'm saying is these dental labs were selling
12 crowns to dentists for use with bruxers?
13 A. Yes, gold crowns, metal occlusals, not
14 full contour zirconia.
15 Q. But they were selling crowns for bruxers?
16 A. Yes, but I'm not aware of them calling
17 them a BruxZir crown. They're a gold crown, a
18 metal occlusal crown.
19 Q. But there's nothing wrong with them
20 describing in their own materials that they have a
21 crown which is, for example, indicated for
22 bruxers; correct?

Page 82

1 A. No, there's no problem with that.
2 Q. All dental labs have to be able to sell
3 crowns for bruxers meaning patients with bruxism;
4 correct?
5 A. Yes.
6 Q. And so in the example of Keating, do you
7 have an understanding as to whether Keating was
8 using KDZ before Glidewell came out with its
9 BruxZir suite of products in 2009?
10 A. I'm not aware of what he called his
11 crowns before.
12 Q. If I tell you that Keating Dental Arts
13 had a crown that it was offering for sale made not
14 entirely of zirconia but partially out of zirconia
15 that it called a KDZ crown, does that affect your
16 thinking at all?
17 A. No. It's not a problem, in my opinion.
18 A KDZ crown, I'm sure he made lots of those.
19 Q. Yeah, it's a bigger seller for them than
20 the KDZ Bruxer crown that's at issue here. So KDZ
21 by itself is not confusing with Glidewell. You'd
22 agree with that?

Page 83

1 A. I do agree with that.
2 Q. Okay. Now, you've also been identified
3 by Glidewell as a person with knowledge of facts
4 relating to the damages resulting from Keating's
5 alleged infringement in this case. Are you aware
6 of that?
7 A. No, I'm not.
8 Q. Since you're here today, let me ask you.
9 What knowledge do you have on the damages to
10 Glidewell resulting from Keating's alleged
11 infringement?
12 A. My only knowledge would deal with the
13 fact if a doctor is sending a restoration under
14 the assumption he's going to receive a BruxZir
15 crown and he's not, it affects my ability to sell
16 that product to the laboratory. We like that
17 doctor to send that case to one of our 185 or so
18 authorized laboratories.
19 Q. Or to Glidewell itself?
20 A. Yes.
21 Q. And but you're not aware of any specific
22 dentist not going to Glidewell or going to a

Page 84

1 Glidewell authorized lab because of the alleged
2 infringement by Keating Dental Arts; correct?
3 A. I can't give you a name of a doctor, no.
4 Q. In fact, Glidewell sales are outstanding
5 over the last year-and-a-half; correct?
6 A. They have been.
7 Q. In fact, they're increasing; correct?
8 A. They've been steady, yes.
9 Q. And the number of authorized labs has
10 grown between, say, May, 2011, and today; correct?
11 A. That's correct.
12 Q. So business is pretty good for Glidewell;
13 correct?
14 A. Business could be better.
15 Q. I'm sorry?
16 A. Business could be better. There's 10,000
17 labs out there. There's only 185 authorized
18 BruxZir labs; so it's still a very small
19 percentage, but yeah, it's been good.
20 Q. I would like to mark some exhibits for
21 you to look at.
22 MR. JANKOWSKI: First, I'll have the

Page 85

Pages 82 to 85

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 court reporter mark as Exhibit 93 a printout off</p> <p>2 of the Glidewell website associated with BruxZir</p> <p>3 Solid Zirconia.</p> <p>4 (Bartolo Exhibit No. 93 was marked</p> <p>5 for identification.)</p> <p>6 MR. JANKOWSKI: And I'll also have the</p> <p>7 court reporter mark as Exhibit 94 a printout off</p> <p>8 the Glidewell website about PrismaTik Clinical</p> <p>9 Zirconia.</p> <p>10 (Bartolo Exhibit No. 94 was marked</p> <p>11 for identification.)</p> <p>12 MR. JANKOWSKI: And then I'll have the</p> <p>13 court reporter mark as Exhibit 95 a printout off</p> <p>14 the Glidewell website for Lava Crowns & Bridges.</p> <p>15 (Bartolo Exhibit No. 95 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. JANKOWSKI:</p> <p>18 Q. Mr. Bartolo, if you could just briefly</p> <p>19 look at Exhibits 93 through 95 for me. Can you</p> <p>20 just confirm for me that these do look like</p> <p>21 accurate copies of information that Glidewell</p> <p>22 Laboratories provides on its website for these</p> <p style="text-align: right;">Page 86</p>	<p>1 well; right?</p> <p>2 A. It is.</p> <p>3 Q. And --</p> <p>4 A. Zirconia substructure with porcelain</p> <p>5 overlaid.</p> <p>6 Q. That was my next question. So the</p> <p>7 PrismaTik clinical zirconia is something that's</p> <p>8 used as a substructure?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know, can any dental labs make a</p> <p>11 full contour zirconia crown out of the PrismaTik</p> <p>12 material?</p> <p>13 A. They could. It would be very</p> <p>14 unaesthetic.</p> <p>15 Q. It doesn't look nearly as nice as the</p> <p>16 BruxZir?</p> <p>17 A. It was meant as an understructure that</p> <p>18 would be overlaid with the aesthetic portion. The</p> <p>19 porcelain overlay would be giving the toothlike</p> <p>20 appearance; so that material would be very white.</p> <p>21 Q. And, in fact, one way of looking at it is</p> <p>22 this is an old form of zirconia that's existed for</p> <p style="text-align: right;">Page 88</p>
<p>1 three products associated with clicking the</p> <p>2 laboratory tab on the website?</p> <p>3 A. They do.</p> <p>4 Q. And I think you've already been</p> <p>5 testifying about these products, in fact, a little</p> <p>6 bit; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Exhibit 93 is an example of the web</p> <p>9 page associated with the BruxZir milling blocks,</p> <p>10 for example, or the solid zirconia associated with</p> <p>11 the milling blocks; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And Exhibit 94 is associated with</p> <p>14 PrismaTik, which I think you testified about</p> <p>15 earlier; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And so PrismaTik was something that was</p> <p>18 being -- I'm trying to remember. Did you say it</p> <p>19 was being sold when you started at Glidewell</p> <p>20 Direct in 2009; correct?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Okay. And that's a zirconia product as</p> <p style="text-align: right;">Page 87</p>	<p>1 a long time which aesthetically is very poor and</p> <p>2 BruxZir is Glidewell's newer much more aesthetic</p> <p>3 version of zirconia. Is that fair?</p> <p>4 A. Well, PrismaTik crown was an aesthetic</p> <p>5 restoration, but it wasn't a full contour</p> <p>6 restoration; so there is a difference. We were</p> <p>7 talking about making the whole crown out of</p> <p>8 PrismaTik. You can but that would not be</p> <p>9 aesthetic. It's not necessarily old. It's just</p> <p>10 it wasn't meant for that application. It was</p> <p>11 always meant to be layered.</p> <p>12 Q. Right.</p> <p>13 What I'm talking about is the zirconia</p> <p>14 itself, right, associated with the PrismaTik</p> <p>15 clinical zirconia, it's not designed to be an</p> <p>16 aesthetic ceramic solution; correct?</p> <p>17 A. It's only to be used as a substructure.</p> <p>18 Q. And it would be -- it's ugly --</p> <p>19 A. As such, yes. The substructure is not</p> <p>20 ugly, but if you made the whole thing out of the</p> <p>21 substructure material, yes, it would not be</p> <p>22 aesthetically pleasing.</p> <p style="text-align: right;">Page 89</p>

Pages 86 to 89

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. It's designed to be used in places in the
2 mouth where you can't see; right?
3 A. No, I'm referring to the substructure.
4 It's going to be overlaid with porcelain. It's
5 going to look perfectly fine.
6 Q. Because of the porcelain overlay?
7 A. Yes.
8 Q. Whereas with BruxZir you don't need the
9 porcelain overlay to get reasonably good
10 aesthetics?
11 A. That's correct.
12 Q. This zirconia was available before you
13 joined Glidewell in 2009?
14 A. Yes.
15 Q. Looking at Exhibit 95, here's the Lava
16 product I asked you about earlier; correct?
17 A. Yes.
18 Q. This is also a product which is -- is the
19 Lava product itself offered for sale by Glidewell
20 Direct?
21 A. No.
22 Q. This is a reference to dental

Page 90

1 restorations made of Lava being available?
2 A. Yes.
3 Q. Okay. And Glidewell has been making
4 dental restorations made of Lava since before you
5 joined them; correct?
6 A. Yes.
7 Q. Okay.
8 MR. JANKOWSKI: I'm going to have the
9 court reporter mark as Exhibit 96 a printout off
10 of Glidewell's website about IPS e.max &
11 IPS Empress products.
12 (Bartolo Exhibit No. 96 was marked
13 for identification.)
14 BY MR. JANKOWSKI:
15 Q. Mr. Bartolo, can you just confirm for me
16 that this does appear to be an accurate
17 reproduction of information presented on
18 Glidewell's website associated with clicking the
19 laboratory tab?
20 A. Yes, it is.
21 Q. Okay. And I think you testified about
22 this as well. This is an example of dental

Page 91

1 restorations made of the e.max product that we
2 were talking about earlier; correct?
3 A. Yes, it is.
4 Q. And this is an all ceramic system from
5 Ivoclar Vivadent; correct?
6 A. Yes.
7 Q. This was being offered for sale by
8 Glidewell before you joined Glidewell in 2009;
9 correct?
10 A. Yes.
11 Q. And is still available today; correct?
12 A. Yes.
13 Q. And all of these we've been looking at,
14 Exhibits 93 through 96, are, of course, available
15 today?
16 A. Yes.
17 Q. Okay.
18 MR. JANKOWSKI: I'll have the court
19 reporter mark as Exhibit 97 a printout from
20 Glidewell's website about BruxZir milling blanks.
21 (Bartolo Exhibit No. 97 was marked
22 for identification.)

Page 92

1 BY MR. JANKOWSKI:
2 Q. Mr. Bartolo, can you just confirm for me
3 that this appears to be an accurate representation
4 of information on Glidewell's website associated
5 with the BruxZir milling blanks we've been talking
6 about today?
7 A. Yes, it is.
8 Q. And we've also, I think, been referring
9 to these as blocks at times?
10 A. At times, yes.
11 Q. They're essentially the same thing?
12 A. We refer to them as blanks, but they use
13 blocks as well, yes.
14 Q. I believe you said this product would
15 have been offered for sale at -- for the first
16 time after you joined Glidewell later in 2009;
17 correct?
18 A. That's correct.
19 Q. Okay. What's your recollection of what
20 the state of the BruxZir milling blanks were when
21 you joined Glidewell? You were aware of this as a
22 product that was up and coming; correct?

Page 93

Pages 90 to 93

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. I was aware this was a product that was</p> <p>2 up and coming, yes.</p> <p>3 Q. And were you involved in kind of the</p> <p>4 timing of the release of it?</p> <p>5 A. No. My role was to sell the product when</p> <p>6 it was available. I wasn't involved in the timing</p> <p>7 of that release.</p> <p>8 Q. Okay. Based on Exhibit 97, it appears</p> <p>9 that there are different size or shaped milling</p> <p>10 blanks that are sold depending on what kind of</p> <p>11 milling machine it's going to be used with. Is</p> <p>12 that accurate?</p> <p>13 A. That is correct, yes.</p> <p>14 Q. It looks like there are some milling</p> <p>15 blanks sold by Glidewell with a 10-millimeter band</p> <p>16 machined around the circumference of the disk.</p> <p>17 Are you aware of that?</p> <p>18 A. Yes.</p> <p>19 Q. Those are designed for use with Wieland,</p> <p>20 i-core and Origin milling machines; is that</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p style="text-align: right;">Page 94</p>	<p>1 product was being finalized?</p> <p>2 A. BruxZir milling machines, yes. The</p> <p>3 Inteletek was already available.</p> <p>4 Q. That's right. You testified about the</p> <p>5 Inteletek milling machines.</p> <p>6 MR. JANKOWSKI: I'll have the court</p> <p>7 reporter mark as Exhibit 98 a printout off of</p> <p>8 Glidewell's website about a BruxZir mill.</p> <p>9 (Bartolo Exhibit No. 98 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. JANKOWSKI:</p> <p>12 Q. Mr. Bartolo, if you can just confirm for</p> <p>13 me that this appears to be an accurate</p> <p>14 presentation of information that's presented on</p> <p>15 Glidewell's website if you click on the laboratory</p> <p>16 tab?</p> <p>17 A. That is correct.</p> <p>18 Q. And this Exhibit 98 is providing</p> <p>19 information on the BruxZir mill that we've been</p> <p>20 talking about today; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And it says right here that this</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. Glidewell also sells a milling blank with</p> <p>2 a 6-millimeter plastic band glued around the</p> <p>3 circumference of the disk designed for use with</p> <p>4 digital dental milling machines; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Then there's a size or shape of a milling</p> <p>7 blank that's designed to be used with Glidewell's</p> <p>8 own milling machines, BruxZir milling machines;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And other milling machines can also mill</p> <p>12 those same blanks including Inteletek, Haas, and</p> <p>13 Rotors milling machines; is that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. That is consistent with our previous</p> <p>16 discussion with how labs can have their own</p> <p>17 milling machines; right?</p> <p>18 A. Yes.</p> <p>19 Q. I think you testified earlier that</p> <p>20 Glidewell began selling milling machines a little</p> <p>21 bit later in time after the milling blanks</p> <p>22 themselves were offered for sale because the</p> <p style="text-align: right;">Page 95</p>	<p>1 mill is custom built at Glidewell's labs in</p> <p>2 California.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have a sense for how many mills</p> <p>6 BruxZir mills Glidewell sells in a typical month?</p> <p>7 A. I do.</p> <p>8 Q. And what's a typical number?</p> <p>9 A. I'd say a couple a month.</p> <p>10 Q. A couple a month.</p> <p>11 Is that number going up with time?</p> <p>12 A. No, it's pretty steady.</p> <p>13 Q. It's pretty steady. Okay.</p> <p>14 A. It's a big investment for most labs.</p> <p>15 MR. JANKOWSKI: I'll have the court</p> <p>16 reporter mark as Exhibit 99 a printout off of</p> <p>17 Glidewell's laboratory website entitled</p> <p>18 "Authorized BruxZir Solid Zirconia Laboratories."</p> <p>19 (Bartolo Exhibit No. 99 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. JANKOWSKI:</p> <p>22 Q. Mr. Bartolo, if you can just confirm for</p> <p style="text-align: right;">Page 97</p>

Pages 94 to 97

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 me this appears to be an accurate representation</p> <p>2 of information that's presented on Glidewell's</p> <p>3 website by clicking on the laboratory tab.</p> <p>4 A. It is accurate.</p> <p>5 Q. And this particular page is going through</p> <p>6 basically providing information for dental labs on</p> <p>7 why it may be beneficial for them to become an</p> <p>8 authorized BruxZir lab; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And if you turn to the second page of</p> <p>11 Exhibit 99, you'll see that it says halfway down</p> <p>12 it says, "Ways to become an authorized BruxZir</p> <p>13 lab."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And I see the first one says, "Buy</p> <p>17 BruxZir milling blanks."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And we've talked about that at length</p> <p>21 already.</p> <p>22 A little farther down I see it says,</p> <p style="text-align: right;">Page 98</p>	<p>1 e-mail blast reference with a 2009-2010.</p> <p>2 Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. The content of this website is -- it</p> <p>5 appears to be introducing the www.BruXZir.com</p> <p>6 website.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall Glidewell introducing this</p> <p>10 new website?</p> <p>11 A. Yeah.</p> <p>12 Q. Did that take place in late 2009?</p> <p>13 A. There may have been another one before</p> <p>14 that, but that sounds about right.</p> <p>15 Q. Certainly in the year 2009?</p> <p>16 A. Yes, definitely.</p> <p>17 Q. Okay. This particular website is devoted</p> <p>18 to the BruxZir product, dental restorations,</p> <p>19 crowns and bridges; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And one thing I notice in this particular</p> <p>22 page is if you look at the little paragraph there</p> <p style="text-align: right;">Page 100</p>
<p>1 "Purchase the BruxZir milling system."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Is purchasing the milling system by</p> <p>5 itself going to be enough to become an authorized</p> <p>6 BruxZir lab? I assume you still have to be buying</p> <p>7 milling blanks; correct?</p> <p>8 A. Yes, that's correct. The milling blanks</p> <p>9 is the key.</p> <p>10 Q. That's what I thought.</p> <p>11 MR. JANKOWSKI: I'd like to have the</p> <p>12 court reporter mark as Exhibit 100 a printout from</p> <p>13 the website www.BruXZir.com, and it appears to be</p> <p>14 an e-mail blast from October, 2009. This was</p> <p>15 produced by Glidewell in the case but does not</p> <p>16 have a production number because it was in the</p> <p>17 documents that were provided as PDFs.</p> <p>18 (Bartolo Exhibit No. 100 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. JANKOWSKI:</p> <p>21 Q. Mr. Bartolo, if you look in the upper</p> <p>22 right corner of this document, you'll see the</p> <p style="text-align: right;">Page 99</p>	<p>1 you'll see, again, it's talking about things that</p> <p>2 a dental lab can do to become an authorized</p> <p>3 BruxZir lab.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And it says there are three ways to do</p> <p>7 this.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. It says -- the first way it looks like it</p> <p>11 says, "Purchase the special BruxZir high</p> <p>12 translucent zirconia blanks."</p> <p>13 You've already been testifying about</p> <p>14 that; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And another thing it says is, "If you</p> <p>17 have a 3Shape scanner and 2009 dental designer</p> <p>18 software, send your 3Shape design file to</p> <p>19 Glidewell Laboratories."</p> <p>20 Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. So is that an independent way to become</p> <p style="text-align: right;">Page 101</p>

Pages 98 to 101

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 an authorized lab?
2 A. Yes, it is.
3 Q. And would these people be buying the
4 BruxZir milling blanks as well?
5 A. No, they would not. They're sending us
6 the file for us to mill in-house. We send them
7 back a final restoration.
8 Q. Oh, okay. But are these dentists or labs
9 that would be doing this?
10 A. These are labs.
11 Q. These are labs.
12 So these labs are using Glidewell as a
13 lab for them for this product?
14 A. Correct.
15 Q. Okay. So this is another -- this is a
16 category of -- a subcategory, if you will, of
17 authorized labs that may not actually be
18 purchasing the BruxZir blanks; correct?
19 A. That is correct.
20 Q. Okay. Do you have a sense of the -- you
21 said there were approximately 185 authorized labs
22 today?

Page 102

1 A. Yes.
2 Q. Do you have a sense of how many of them
3 would fall into category 2 where they're not
4 purchasing BruxZir milling blanks?
5 A. I don't have an accurate number, but most
6 laboratories on the list are buying blanks. It's
7 a smaller percentage that send it to us.
8 Q. Okay. You just don't know exactly what
9 that percentage is?
10 A. No, I'd have to take a guess.
11 Q. Okay. And then there's a third way
12 that's listed here that says to, "Send your master
13 and opposing model work with pinned, trimmed dyes
14 and a bite registration."
15 Do you see that?
16 A. Yes.
17 Q. So that's another way as well?
18 A. Yes, for people who do not have a 3Shape
19 scanner they can still send us a traditional
20 model. A 3Shape is just a way of digitizing that
21 information and sending it to us over the Internet
22 which speeds up the process and they control the

Page 103

1 design. This way it's just sending a case to us.
2 We will fabricate it to them, and they will mark
3 it up and send it to their dentist.
4 Q. So this 3 is similar to category 2?
5 A. Correct.
6 Q. It's another lab that's not going to be
7 buying the milling blanks, but they're having
8 Glidewell make the actual restorations?
9 A. Yes.
10 Q. Okay. Do you have a sense, as you sit
11 here today, of how many of the authorized labs
12 have what's called the 3Shape scanner and a dental
13 designer software as referenced here?
14 A. It's a very popular system; so most labs
15 have a 3Shape scanner. Only a small lab would not
16 want to invest \$30,000 in a scanner.
17 Q. And most labs who are buying milling
18 blanks have their own scanners as well?
19 A. Yes, they would. Yeah, that's a
20 requirement. You need to have a scanner in order
21 to feed that mill.
22 Q. So it would be safe to say that

Page 104

1 90 percent of the labs are buying BruxZir milling
2 blanks -- 90 percent of the authorized labs are
3 buying BruxZir milling blanks from Glidewell?
4 A. As I stated, it's a guess, but it sounds
5 about right. It would be the majority of the labs
6 on that list are buying blanks.
7 MR. JANKOWSKI: I'll have the court
8 reporter mark as Exhibit 101 a document produced
9 by Glidewell in this case, two pages, and it
10 appears to be a marketing document. At the top,
11 it has "BruxZir. A New Option for Virtually
12 Unbreakable Restorations."
13 (Bartolo Exhibit No. 101 was marked
14 for identification.)
15 BY MR. JANKOWSKI:
16 Q. Mr. Bartolo, do you recognize
17 Exhibit 101?
18 A. I do.
19 Q. What is Exhibit 101?
20 A. It's, again, showing people how to send
21 BruxZir restorations, model work, 3Shape design,
22 buying a 3Shape scanner, or buying a mill.

Page 105

Pages 102 to 105

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. Okay. So, again, these are going to be
2 not dentists dealing with Glidewell but rather
3 labs; correct?
4 A. Yes.
5 Q. And on the second page of Exhibit 101
6 towards the bottom it says, "Become an authorized
7 BruxZir lab," then a colon.
8 Do you see that?
9 A. Yes.
10 Q. And then it has an option, "Buy BruxZir
11 milling blanks."
12 Do you see that?
13 A. Right.
14 Q. That's what we've been discussing;
15 correct?
16 A. Yes, it is.
17 Q. And then I see another one, "Purchase the
18 PrismaTik clinical zirconia system."
19 Do you see that?
20 A. Yes, I do.
21 Q. Is that something new that we haven't
22 been talking about? What is that?

Page 106

1 A. No. Those are the InteleTek machines we
2 discussed that predate the BruxZir mill.
3 Q. Does that mean you can become an
4 authorized BruxZir lab by buying the -- that
5 milling system?
6 A. You could.
7 Q. And do you have to buy the milling blanks
8 as well?
9 A. Yes.
10 Q. In this instance, the Nos. 4 and 5 are
11 kind of banded together. If you're going to be an
12 authorized lab, you're going to be buying the
13 milling blanks and you can also purchase the
14 clinical zirconia system; right?
15 A. Right.
16 Q. But the milling blanks are part of what
17 you need to do here?
18 A. That's correct. This system is just the
19 precursor to the BruxZir mill.
20 Q. Okay. And, again, the BruxZir mill is
21 optional and this PrismaTik --
22 A. Is optional as well.

Page 107

1 Q. Okay.
2 MR. JANKOWSKI: I'll have the court
3 reporter mark as Exhibit 102 a multipage document
4 produced by Glidewell in this case. On the front
5 page it has a title, "BruxZir Solid Zirconia
6 Business Integration Program."
7 (Bartolo Exhibit No. 102 was marked
8 for identification.)
9 BY MR. JANKOWSKI:
10 Q. Mr. Bartolo, I'll just ask you, do you
11 recognize Exhibit 102?
12 A. I do.
13 Q. What is Exhibit 102?
14 A. It's a promotional piece that talks about
15 the full system from the scanner to the mill to
16 all the accessories needed in the fabrication of
17 BruxZir restorations. It shows the blocks, the
18 liquids, and accessory items.
19 Q. What is meant by "business integration
20 program"?
21 A. In this case, it's a one stop shop.
22 Instead of piecemealing a scanner from one company

Page 108

1 and a mill by another company and the usual
2 challenges of linking all these things together,
3 we're offering a package solution from start to
4 finish. Everything integrated and proven in our
5 laboratory. So it's a very easy way to get up and
6 running.
7 Q. This is a Glidewell Direct promotion;
8 correct?
9 A. Yes, it is.
10 Q. In fact, that's listed on the front page;
11 correct?
12 A. Yes.
13 Q. Okay. And I notice if you turn about
14 five pages in, I see a reference to the BruxZir
15 Fast Fire furnace.
16 Do you see that?
17 A. Yes, I do.
18 Q. I think you were testifying about that
19 earlier.
20 A. I did.
21 Q. And below that there's a BruxZir drying
22 unit as well; correct?

Page 109

Pages 106 to 109

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. Yes.</p> <p>2 Q. And there's a BruxZir vacuum chamber?</p> <p>3 A. Yes.</p> <p>4 Q. And a BruxZir sintering boats and beads;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. If you turn to the next page of</p> <p>8 Exhibit 102, there's a promotional page on the</p> <p>9 authorized lab program; correct?</p> <p>10 A. Yes.</p> <p>11 Q. So this is, again, talking about the</p> <p>12 marketing benefits of becoming an authorized lab</p> <p>13 if you're a dental lab; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. The first thing it says consistent</p> <p>16 with that, the message is "for increased market</p> <p>17 visibility"; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Because now the dental lab, by signing</p> <p>20 on, gets the power of Glidewell's marketing to go</p> <p>21 nationwide and reach a large audience?</p> <p>22 A. Exactly.</p> <p style="text-align: right;">Page 110</p>	<p>1 Patterson.</p> <p>2 Q. So the CEREC is a reference to a milling</p> <p>3 machine?</p> <p>4 A. Yes, it is.</p> <p>5 Q. So is there a protocol like this which is</p> <p>6 created by Glidewell for each of the different</p> <p>7 milling machines that can be worked with it's</p> <p>8 milling blanks?</p> <p>9 A. There is, yes.</p> <p>10 Q. And if you turn in three pages, I see</p> <p>11 there's a page which says, "BruxZir sintering and</p> <p>12 coloring instructions."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it looks like it's providing coloring</p> <p>16 tips and sintering tips for dental labs that are</p> <p>17 using the BruxZir milling blanks. Is that fair?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And there's also information on staining</p> <p>20 and glazing as well; correct?</p> <p>21 A. Yes, there is.</p> <p>22 Q. And I notice that under "Sintering," I</p> <p style="text-align: right;">Page 112</p>
<p>1 Q. Okay.</p> <p>2 MR. JANKOWSKI: I'll have the court</p> <p>3 reporter mark as Exhibit 103 a four-page document</p> <p>4 produced by Glidewell in this case. At the top,</p> <p>5 it says, "Protocol to mill and sinter BruxZir</p> <p>6 Solid Zirconia Milling Blanks," and then in</p> <p>7 parentheses, "beta version with CEREC's inLab</p> <p>8 System."</p> <p>9 (Bartolo Exhibit No. 103 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. JANKOWSKI:</p> <p>12 Q. Mr. Bartolo, do you recognize</p> <p>13 Exhibit 103?</p> <p>14 A. I do.</p> <p>15 Q. What is Exhibit 103?</p> <p>16 A. It's instructions on how to mill and</p> <p>17 sinter BruxZir restorations for the CEREC in-lab</p> <p>18 system.</p> <p>19 Q. What is the CEREC in-lab system?</p> <p>20 A. It's a different mill. We make the</p> <p>21 blocks for the Sirona company, and they sell those</p> <p>22 blocks through their distribution arm which is</p> <p style="text-align: right;">Page 111</p>	<p>1 see there's a ramp up cycle and a ramp down cycle.</p> <p>2 Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Is this specific to any particular oven</p> <p>5 or any sintering oven is going to go through these</p> <p>6 same cycles?</p> <p>7 A. Yeah. Like we talked about earlier, this</p> <p>8 is the ramp up cycle that would work in most</p> <p>9 furnaces. The critical component is the final</p> <p>10 temperature, 1530 degrees. The Fast Fire which we</p> <p>11 also talked about has a plastic heat ramp that at</p> <p>12 10 degrees most furnaces should be able to handle</p> <p>13 that.</p> <p>14 Q. So with the Fast Fire furnace, the heat</p> <p>15 rate would actually be higher than what's shown</p> <p>16 here?</p> <p>17 A. Yes, that's correct. The hold time would</p> <p>18 stay the same, the final temperature would stay</p> <p>19 the same. It would get up to temperature faster.</p> <p>20 Q. How about the ramp down cycle? Does that</p> <p>21 apply to all sintering ovens?</p> <p>22 A. Yeah, it's a matter of going up to a very</p> <p style="text-align: right;">Page 113</p>

Pages 110 to 113

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 high temperature, 1530 degrees. It takes a long
2 time to cool down; so the ramp time down is just
3 to make sure it doesn't stress the material by
4 opening up the door and introducing cold air.
5 It's making sure it gets down to the correct
6 temperature before you open the door.
7 Q. In terms of what the labs are doing, the
8 labs need to follow the instructions or -- the
9 labs need to follow the procedure properly in
10 order to have the product come out properly; is
11 that right? We talked about that earlier?
12 A. Yes.
13 Q. There's also instructions on staining and
14 glazing with firing parameters, and I see a column
15 there labeled "Universal staining glaze."
16 Do you see that?
17 A. Yes, I do.
18 Q. What's your understanding of this little
19 table?
20 A. It's just a reminder that the technique
21 is, as it says on the first line, virtually
22 identical to the PFM method as far as the staining
Page 114

1 of the restoration is concerned. The firing
2 temperatures are the same. It's a glaze that can
3 be used both on a zirconia restoration and a
4 porcelain-fused-to-metal restoration.
5 Q. What does that mean? What is the PFM
6 method?
7 A. Porcelain fused to metal.
8 Q. I know what PFM stands for although that
9 is helpful. Thank you.
10 So the staining technique is something
11 that's well known, all these dental labs are going
12 to know what the staining technique is for PFM?
13 A. Yes, virtually every crown made in the
14 laboratory is stained and glazed regardless of the
15 material that's used.
16 Q. And, again, I mean it's -- the lab has to
17 follow the procedures properly to make the stain
18 and glaze come out properly; correct?
19 A. Yes.
20 MR. JANKOWSKI: Next I'll have the court
21 reporter mark as Exhibit 104 a multipage document
22 produced by Glidewell in this case. On the front
Page 115

1 page it says, "Training for remote labs and early
2 adopters."
3 (Bartolo Exhibit No. 104 was marked
4 for identification.)
5 BY MR. JANKOWSKI:
6 Q. Mr. Bartolo, do you recognize
7 Exhibit 104?
8 A. I do.
9 Q. What is Exhibit 104?
10 A. It's a training manual for remote labs
11 and early adopters.
12 Q. And what is meant by "remote labs"?
13 A. A Glidewell sister lab.
14 Q. Did you say sister lab?
15 A. Yes.
16 Q. So is that different than an authorized
17 lab?
18 A. It's a Glidewell-owned laboratory.
19 Q. So this is a lab which is a Glidewell
20 facility?
21 A. Yes.
22 Q. Okay. So this is a document which is
Page 116

1 telling Glidewell's own in-house people how to
2 perform certain tasks?
3 A. Right.
4 Q. Okay. How many sister labs are there in
5 Glidewell?
6 A. There's eight labs all together.
7 Q. And those are located in different parts
8 of the U.S. and other countries?
9 A. Yes.
10 Q. So this particular document is not
11 associated with Glidewell Direct; correct?
12 A. No. Typically -- the information would
13 come from us, but it applied to both our internal
14 laboratories as well as, as the name indicates,
15 those few labs in the beginning that joined in.
16 It was a small group.
17 Q. That was my next question. Who are the
18 early adopters? What does that mean?
19 A. The first buyers of the complete system.
20 Q. When was that document created?
21 A. I don't see a date, but it would be
22 sometime in 2009 after the release of the BruxZir
Page 117

Pages 114 to 117

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 blanks and liquids and the technique we followed</p> <p>2 at Glidewell Laboratories.</p> <p>3 Q. So was a document like this provided to</p> <p>4 Glidewell's authorized labs?</p> <p>5 A. Yes, the early adopters would be</p> <p>6 authorized labs. They were the first few.</p> <p>7 Q. Right.</p> <p>8 So is there an analogous document to this</p> <p>9 which is training for Glidewell's authorized labs</p> <p>10 as the title, for example?</p> <p>11 A. It would be the same information. This</p> <p>12 is just an earlier document. This goes right to</p> <p>13 the beginning. There's been changes since.</p> <p>14 Q. Let me ask you the question. Referring</p> <p>15 back to Exhibit 102 for a moment, the business</p> <p>16 integration program document, who's the audience</p> <p>17 for that document?</p> <p>18 A. Dental laboratories.</p> <p>19 Q. How are they provided with this document?</p> <p>20 A. We mail it to them.</p> <p>21 Q. Is it sent only to authorized labs, or is</p> <p>22 this one sent to more laboratories?</p> <p style="text-align: right;">Page 118</p>	<p>1 Q. Is that handled by Glidewell Direct</p> <p>2 itself?</p> <p>3 A. Yes.</p> <p>4 Q. And same question for 102. It's</p> <p>5 Glidewell Direct that would be, you know, mailing</p> <p>6 this thing out to as many as 2,000 labs around the</p> <p>7 country?</p> <p>8 A. 102, yes.</p> <p>9 Q. And now Exhibit 104, the audience for</p> <p>10 that is Glidewell's sister labs and the early</p> <p>11 adopters, the very earliest of the authorized</p> <p>12 labs; correct?</p> <p>13 A. Yes, that's correct.</p> <p>14 Q. But then your testimony is there are</p> <p>15 later versions of this that would be going to the</p> <p>16 adopters that weren't early. They came later.</p> <p>17 A. Correct.</p> <p>18 Q. And it would have the same information?</p> <p>19 A. A lot of the same information just</p> <p>20 updated.</p> <p>21 Q. And I see on Exhibit 104 several pages in</p> <p>22 there is a page that has sprue technique or wax</p> <p style="text-align: right;">Page 120</p>
<p>1 A. No, it's sent to all labs.</p> <p>2 Q. So that could go to 2,000 laboratories</p> <p>3 maybe?</p> <p>4 A. Yes.</p> <p>5 Q. So this is part of an effort by Glidewell</p> <p>6 to get more labs signed up as authorized labs?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And how about Exhibit 103? Who's</p> <p>9 the audience for Exhibit 103? This is the</p> <p>10 protocol to mill and sinter BruxZir.</p> <p>11 A. 103 was for CEREC; correct?</p> <p>12 Q. Yes.</p> <p>13 A. That would be for CEREC milling owners.</p> <p>14 Q. So this would be a subset of authorized</p> <p>15 labs; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And those are the authorized labs that</p> <p>18 you know are using the CEREC system?</p> <p>19 A. Correct.</p> <p>20 Q. And how is this provided to them? Do you</p> <p>21 know?</p> <p>22 A. Same. Mailed and possibly e-mailed.</p> <p style="text-align: right;">Page 119</p>	<p>1 technique, sprue spelled s-p-r-u-e.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. What is a sprue technique?</p> <p>5 A. It's a different method of milling the</p> <p>6 BruxZir restoration. The sprue technique is the</p> <p>7 most common. Think of it as an attachment point</p> <p>8 in the block that's holding the crown in place as</p> <p>9 opposed to milling half of the block first,</p> <p>10 pouring wax in that side to hold the restorations</p> <p>11 in place. You then flip the block and you mill</p> <p>12 the other side. So those were two techniques that</p> <p>13 were used at the time, and the wax technique is no</p> <p>14 longer used today.</p> <p>15 Q. So the wax technique is now outdated?</p> <p>16 A. Yes, I would say so.</p> <p>17 Q. The sprue technique is still being used?</p> <p>18 A. Yes.</p> <p>19 Q. And on the same page, I see that the</p> <p>20 third paragraph down says, "At Glidewell, we use</p> <p>21 an old ceramic furnace Pro 100 with an open</p> <p>22 muffle."</p> <p style="text-align: right;">Page 121</p>

Pages 118 to 121

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Do you see that?
2 A. Yes, I do.
3 Q. What is that a reference to?
4 A. It applies only to the wax technique.
5 You have to soften the wax so that you can remove
6 the restorations.
7 Q. Okay. So this is completely different
8 than a sintering furnace?
9 A. Yes. This is the step prior to the
10 sintering stage. You want to melt the wax so that
11 you can access the restorations which in turn will
12 then be sintered.
13 Q. And then turning to the next page, I
14 think we see the same information we saw before on
15 staining and glazing?
16 A. Yes.
17 Q. And it being referenced as being
18 "Virtually identical to the PFM method."
19 Do you see that?
20 A. Yes, I do.
21 Q. Now, it says "virtually identical." Do
22 you understand what the difference is between the
Page 122

1 staining and glazing for the PFM method and
2 BruxZir?
3 A. I think they're identical, but I'm not
4 sure why they use the word "virtually."
5 Q. The second line down says, "Experience
6 has shown us the need to shade the crown a bit
7 darker than listed on the prescription."
8 Do you see that?
9 A. Yes.
10 Q. Do you have any understanding about that?
11 A. Yes.
12 Q. What's your understanding?
13 A. The optical properties of that version of
14 the material required a little heavier staining to
15 get the desired result. This is -- this goes back
16 to the early adopter instruction. It's the first
17 generation of the BruxZir material. The
18 "virtually identical" may have to deal with the
19 fact you had to stain it a little bit darker, but
20 the firing temperatures and the way you apply it
21 are exactly the same.
22 Q. And you made reference to a first
Page 123

1 generation. How many generations would you say
2 there have been of the BruxZir product?
3 A. It's been a continual progression. The
4 R&D team has worked diligently to improve the
5 translucency. That's the key ingredient that
6 we've all been working towards which now helps us
7 use a BruxZir material not only on the posteriors
8 but also on the anteriors. We've reached an
9 aesthetic level that was acceptable even in the
10 aesthetic zone.
11 Q. Does Glidewell talk about a second
12 generation or third generation or fourth
13 generation?
14 A. No, it's just been an evolution.
15 Q. But certainly the product today in 2012
16 is -- if you purchase the BruxZir milling blanks
17 today, it's a different product than it was when
18 these early adopters would have been getting it in
19 2009; correct?
20 A. Yes, it's far more aesthetic today.
21 Q. More translucent?
22 A. Yes.
Page 124

1 Q. On this same page, I see a reference to
2 tips again just like on the other document?
3 A. Yes.
4 Q. Just, again, giving tips to the lab on
5 how to get the product as good as it can be;
6 correct?
7 A. Yes.
8 Q. I also see a reference at the very bottom
9 it looks like there's a technical support number
10 given, an 888 number; correct?
11 A. Right.
12 Q. And so I think you testified about that
13 earlier as well which is labs can call Glidewell
14 obviously to order product but with any technical
15 questions if they have them?
16 A. Yes, they can.
17 Q. Correct?
18 A. Yes.
19 Q. And that's Glidewell Direct who receives
20 those phone calls; correct?
21 A. Yes.
22 Q. Do you have an understanding of how many
Page 125

Pages 122 to 125

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 people man the phones for Glidewell Direct?
 2 A. There's four.
 3 Q. Four.
 4 Are they customer service?
 5 A. Customer service. We referred to them
 6 earlier as the in-bound group.
 7 Q. Turn to the last page of Exhibit 104.
 8 There seems to be a signature Jo, J-o.
 9 Do you see that?
 10 A. Yes.
 11 Q. Do you have any idea what that is?
 12 A. I guess Jim Shuck, but it's a guess.
 13 Q. I just didn't know if that was actually
 14 like a Glidewell thing or --
 15 A. No. I'm not sure what that -- that piece
 16 doesn't belong back there, I don't think.
 17 Q. Okay.
 18 A. I think it's a blank letterhead.
 19 MR. JANKOWSKI: Next I'll have the court
 20 reporter mark as Exhibit 105 what appears to be a
 21 PowerPoint presentation on the BruxZir portfolio
 22 by Robin Bartolo.

Page 126

1 (Bartolo Exhibit No. 105 was marked
 2 for identification.)
 3 BY MR. JANKOWSKI:
 4 Q. Mr. Bartolo, can you just briefly look at
 5 Exhibit 105 and let me know if you recognize what
 6 it is.
 7 A. I do.
 8 Q. What is Exhibit 105?
 9 A. It's a PowerPoint presentation on the
 10 BruxZir portfolio of products.
 11 Q. Was this a presentation that you gave?
 12 A. Yes.
 13 Q. And I see a date on it, January 26 to 27,
 14 2002, under the name BruxZir Laboratory Summit.
 15 Do you see that?
 16 A. Yes.
 17 Q. And so was this a presentation you gave
 18 at Glidewell's Laboratory Summit?
 19 A. Yes.
 20 Q. And the presentation was given in
 21 January, 2012?
 22 A. It was.

Page 127

1 Q. Okay. And that's a gathering of -- the
 2 attendees are Glidewell's authorized labs; is that
 3 correct?
 4 A. Yes, that's correct.
 5 Q. Do you have a sense for how many of them
 6 attend, what percentage?
 7 A. There's room for 40 people in the
 8 classroom; so that's the limiting factor, and it
 9 was full.
 10 Q. Does that mean it's, like, a first come
 11 first serve --
 12 A. It was.
 13 Q. -- of labs to sign up?
 14 A. Yes.
 15 Q. Okay. And I believe there was also a
 16 presentation given in May, 2012; is that correct?
 17 A. That's correct.
 18 Q. Did that also have a capacity of 40?
 19 A. Yes.
 20 Q. Why is there a capacity of 40? It's just
 21 the room where it's done?
 22 A. There's 40 seats.

Page 128

1 Q. This is a room which is in Glidewell's
 2 facility?
 3 A. Yes.
 4 Q. That's here in Irvine?
 5 A. It is. It's the Glidewell international
 6 training center.
 7 Q. Does this appear to be a correct
 8 representation of your presentation?
 9 A. Yes, it does.
 10 Q. What was the purpose of your
 11 presentation?
 12 A. Well, it's just a recap of, as we
 13 discussed, not everybody had a mill. So it's an
 14 opportunity even to our authorized laboratories to
 15 take an opportunity to tell them about the
 16 benefits of the mill and the software that's
 17 associated with it. It's just an overview. Some
 18 of the laboratories may need another 3Shape
 19 scanner. They may not have bought the first one
 20 from us. It's an opportunity as they grow to buy
 21 that unit from us. The Fast Fire oven highlighted
 22 the faster cycle time down from eight-and-a-half

Page 129

Pages 126 to 129

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 hours to five hours. And then just some of the</p> <p>2 accessories that go along with it to complete the</p> <p>3 package, liquids, vacuum chamber, drying unit, and</p> <p>4 the BruxZir spray glaze. All the components that</p> <p>5 go into making a BruxZir restoration.</p> <p>6 Q. So when it says "BruxZir portfolio," it's</p> <p>7 describing basically the suite of products that</p> <p>8 Glidewell offers associated with the BruxZir</p> <p>9 product; right?</p> <p>10 A. Yes. Yeah.</p> <p>11 Q. So one goal is hopefully the labs are</p> <p>12 going to buy more products from Glidewell; right?</p> <p>13 A. Yes, yes.</p> <p>14 Q. You're the sales manager of --</p> <p>15 A. I am. That's my title.</p> <p>16 Q. It's your job; right?</p> <p>17 A. Yes, it is.</p> <p>18 Q. All right. I'll provide you with -- I'll</p> <p>19 have the court reporter mark as Exhibit 106 --</p> <p>20 A. They keep getting bigger.</p> <p>21 Q. Yes. This one's bigger. I'm not going</p> <p>22 to have you read the whole thing or even close.</p> <p style="text-align: right;">Page 130</p>	<p>1 you recall him giving?</p> <p>2 A. It does.</p> <p>3 Q. Okay. Do you have an understanding of</p> <p>4 what the purpose of Mr. Glidewell's presentation</p> <p>5 here?</p> <p>6 A. Well, the purpose was to discuss the</p> <p>7 trends in our laboratory and in the dental</p> <p>8 laboratory in going in a digital fashion and how</p> <p>9 this system ties in nicely with the change in the</p> <p>10 manufacturing techniques used today. So it was an</p> <p>11 overview.</p> <p>12 Q. And, in fact, there's slides on here that</p> <p>13 talk a lot about CAD/CAM; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Is this an effort to try to get the</p> <p>16 authorized labs on board with using CAD/CAM</p> <p>17 systems to the extent they're not?</p> <p>18 A. Yeah, that would help. There's also tips</p> <p>19 on how to grow the business. Mr. Glidewell's</p> <p>20 grown his laboratory significantly, and he's just</p> <p>21 sharing some of his beliefs and knowledge and</p> <p>22 sharing it with our BruxZir authorized</p> <p style="text-align: right;">Page 132</p>
<p>1 This one is huge. I actually have very little to</p> <p>2 ask on it. It's a presentation that also appears</p> <p>3 to have been given at the BruxZir Laboratory</p> <p>4 Summit in January, 2012 entitled "The Digital</p> <p>5 Dental Lab."</p> <p>6 (Bartolo Exhibit No. 106 was marked</p> <p>7 for identification.)</p> <p>8 BY MR. JANKOWSKI:</p> <p>9 Q. This is a very long document,</p> <p>10 Mr. Bartolo. I don't need you to read it by any</p> <p>11 means. This was produced by Glidewell in this</p> <p>12 case. It appears to be a presentation at that</p> <p>13 same Summit that you were just talking about in</p> <p>14 connection with Exhibit 105, this presentation</p> <p>15 being given by Jim Glidewell, the president of</p> <p>16 Glidewell Laboratories; is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. And were you present when he gave this</p> <p>19 presentation?</p> <p>20 A. I was.</p> <p>21 Q. Okay. Does this appear to be a correct,</p> <p>22 you know, representation of the presentation that</p> <p style="text-align: right;">Page 131</p>	<p>1 laboratories.</p> <p>2 Q. Right.</p> <p>3 And, in fact, the third page of the</p> <p>4 document talks about the changing landscape of the</p> <p>5 industry; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the first bullet point says, "Many of</p> <p>8 your old laboratory friends will not make the</p> <p>9 transition."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So that's a reference to upgrades and</p> <p>13 technology?</p> <p>14 A. Yes, and the transition to computer-aided</p> <p>15 design.</p> <p>16 MR. JANKOWSKI: Why don't we take just a</p> <p>17 real short break, like, five minutes, ten minutes.</p> <p>18 (Recess taken from 12:21 p.m. to</p> <p>19 12:28 p.m.)</p> <p>20 BY MR. JANKOWSKI:</p> <p>21 Q. Mr. Bartolo, you're involved in some</p> <p>22 capacity in communicating with companies who may</p> <p style="text-align: right;">Page 133</p>

Pages 130 to 133

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 be infringing in Glidewell's view its trademark</p> <p>2 BruxZir; correct?</p> <p>3 A. That is correct.</p> <p>4 Q. What is your role in that process?</p> <p>5 A. It usually involves making a phone call</p> <p>6 and trying to see if that laboratory would like to</p> <p>7 use the BruxZir product instead of the material</p> <p>8 they're working with today, or if they don't want</p> <p>9 to do that, we request that they don't use the</p> <p>10 BruxZir name in the description of their product.</p> <p>11 Q. When you say "the BruxZir name," you</p> <p>12 don't necessarily mean BruxZir --</p> <p>13 A. BruxZir, Zir.</p> <p>14 Q. It could also be a name that Glidewell</p> <p>15 perceives as confusingly similar to its BruxZir</p> <p>16 name?</p> <p>17 A. Yes.</p> <p>18 Q. Would it be fair to say that -- well,</p> <p>19 first of all, Mr. Allred is involved in these</p> <p>20 communications as well; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And he will write letters or e-mails to</p> <p style="text-align: right;">Page 134</p>	<p>1 A. I'm usually brought in to at least have a</p> <p>2 conversation first to see if there's a</p> <p>3 misunderstanding or a misspelling, an easy</p> <p>4 correction, it's usually just handled with a phone</p> <p>5 call, and most of those times those conversations</p> <p>6 end with a quick correction, or there's a</p> <p>7 discussion about the benefit of joining the</p> <p>8 authorized laboratory system that may be unaware</p> <p>9 to them or that they weren't aware of. So I</p> <p>10 usually have the conversation. If they choose not</p> <p>11 to make the change to the name or to join in, then</p> <p>12 Mr. Allred will typically fire off a letter.</p> <p>13 Q. And are there phone calls usually before</p> <p>14 a letter is sent off? Do you know?</p> <p>15 A. Yes. I'll make the phone call usually</p> <p>16 before the letter is sent off. I'm sure it's not</p> <p>17 always been the case.</p> <p>18 Q. So the first communication that a party</p> <p>19 will receive will typically be a phone call from</p> <p>20 you?</p> <p>21 A. Yes.</p> <p>22 Q. And you'll mention the potentially</p> <p style="text-align: right;">Page 136</p>
<p>1 parties who are perceived as being -- having a</p> <p>2 name that might be confused with BruxZir; correct?</p> <p>3 A. That is correct.</p> <p>4 Q. So is it fair to say Mr. Allred's role is</p> <p>5 the enforcement person who's addressing the</p> <p>6 intellectual property and infringement that</p> <p>7 Glidewell believes may be happening, and you are</p> <p>8 the business development person who is potentially</p> <p>9 trying to develop business from this party?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any role in trying to find</p> <p>12 these people out there using potentially</p> <p>13 confusingly similar marks?</p> <p>14 A. No. It's not my role to find them, but</p> <p>15 if we notice them in an ad or e-mail or website,</p> <p>16 we will have that conversation.</p> <p>17 Q. And Mr. Allred will write to that party;</p> <p>18 correct?</p> <p>19 A. Yes, typically.</p> <p>20 Q. And you'll be brought in -- well, first</p> <p>21 of all, are you always brought in? Are you</p> <p>22 sometimes brought in? What's your understanding?</p> <p style="text-align: right;">Page 135</p>	<p>1 confusing mark to them. You'll mention</p> <p>2 Glidewell's mark, and you'll have a conversation</p> <p>3 about that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And then you'll explain to them</p> <p>6 the benefit of being an authorized lab. Is that</p> <p>7 fair?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have an understanding of how many</p> <p>10 phone calls like this you've made since 2009?</p> <p>11 A. It's not that many. 20 maybe. Again,</p> <p>12 it's a guess. I don't have them catalogued.</p> <p>13 Q. Do you have a sense for -- let's assume</p> <p>14 that it's 20 phone calls you've made -- how many</p> <p>15 have required Mr. Allred to follow up with a</p> <p>16 letter?</p> <p>17 A. I don't know how many letters he's sent.</p> <p>18 As I stated, I'm not sure that I'm always the</p> <p>19 first point of contact, but when I am, it's</p> <p>20 usually because we hope that by having the phone</p> <p>21 conversation, we can avoid the letter going out.</p> <p>22 There may be other reasons why Mr. Allred sent the</p> <p style="text-align: right;">Page 137</p>

Pages 134 to 137

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 letter without me making the phone call, but in</p> <p>2 the events that I made the phone call, the hope</p> <p>3 was to work it out over the phone call and take</p> <p>4 care of it that way.</p> <p>5 Q. And at least sometimes it sounds like</p> <p>6 that's worked?</p> <p>7 A. More often than not it's a simple</p> <p>8 conversation they weren't aware or they agreed to</p> <p>9 change it or they'd love to join in. It's either</p> <p>10 changing the name and call it something else or</p> <p>11 they join in. It's usually pretty easy.</p> <p>12 Q. Normally those are the two options,</p> <p>13 changing the name; so it's not confusingly</p> <p>14 similar --</p> <p>15 A. Correct.</p> <p>16 Q. -- or becoming a BruxZir authorized lab?</p> <p>17 A. That's their option. If they like the</p> <p>18 name and want to participate in the advantages we</p> <p>19 offer, we'd be happy to support that.</p> <p>20 Q. But in that latter circumstance, they're</p> <p>21 not maintaining they're name. They're going to</p> <p>22 use the BruxZir name; correct?</p> <p style="text-align: right;">Page 138</p>	<p>1 "it"?</p> <p>2 A. Making BruxZir crowns, BruxZir</p> <p>3 restorations out of a full contour zirconia</p> <p>4 material.</p> <p>5 Q. So the "it" means a monolithic zirconia</p> <p>6 dental restoration?</p> <p>7 A. A BruxZir monolithic restoration, yes.</p> <p>8 Q. What do you mean by "BruxZir"?</p> <p>9 A. Nobody had done that before we introduced</p> <p>10 the BruxZir model of the crown.</p> <p>11 Q. We're now talking about what a third</p> <p>12 party is doing.</p> <p>13 A. Right.</p> <p>14 Q. What I said is -- before you said nobody</p> <p>15 was doing it, you said.</p> <p>16 A. Correct.</p> <p>17 Q. Now, we're not talking about an</p> <p>18 authorized lab. This is a lab which is not part</p> <p>19 of Glidewell's family; correct?</p> <p>20 A. Okay.</p> <p>21 Q. That's why you contacted them.</p> <p>22 A. Right.</p> <p style="text-align: right;">Page 140</p>
<p>1 A. Yes. If it sounds similar to BruxZir,</p> <p>2 we'll ask them to modify it. If they would like</p> <p>3 to stick with the BruxZir brand, we ask them to</p> <p>4 buy the blocks and become part of the lab program.</p> <p>5 Q. In no instance are they allowed to</p> <p>6 maintain a name which is confusingly similar in</p> <p>7 Glidewell's mind to BruxZir?</p> <p>8 A. Right.</p> <p>9 Q. Do you recall how long you've been</p> <p>10 involved in phone calls like this? Does it go all</p> <p>11 the way back to 2009? Did it start in 2011? Do</p> <p>12 you recall?</p> <p>13 A. It goes back to the beginning.</p> <p>14 Obviously, it's happened more often lately because</p> <p>15 of the popularity of the brand. When we first</p> <p>16 started it, nobody was doing it; so the thought</p> <p>17 was that it was a material that was too white for</p> <p>18 that application; so there weren't that many</p> <p>19 people doing it. It certainly grew very quickly;</p> <p>20 so there were other laboratories that decided they</p> <p>21 wanted to get into that market.</p> <p>22 Q. When you say "doing it," what is the</p> <p style="text-align: right;">Page 139</p>	<p>1 Q. And they're making -- and what I'm</p> <p>2 getting at is they're making a product which is a</p> <p>3 monolithic zirconia dental restoration; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And that's the sphere within which</p> <p>6 Glidewell is paying attention in terms of the</p> <p>7 BruxZir mark; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And so they have a product, monolithic</p> <p>10 zirconia but it's not Glidewell's BruxZir</p> <p>11 zirconia; correct?</p> <p>12 A. That is correct.</p> <p>13 Q. So those -- that's the population of</p> <p>14 parties out there who might get a letter from</p> <p>15 Mr. Allred or a phone call from you; correct?</p> <p>16 A. If their naming convention is similar to</p> <p>17 ours.</p> <p>18 Q. Do you have a sense for what makes a name</p> <p>19 confusingly similar to Glidewell's BruxZir?</p> <p>20 A. It sounds similar.</p> <p>21 Q. Let me ask this question. Are you</p> <p>22 involved in that process?</p> <p style="text-align: right;">Page 141</p>

Pages 138 to 141

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. No, I'm not involved in that process.
2 Q. You're brought in by Mr. Allred because
3 it's been determined --
4 A. Yes.
5 Q. -- by somebody that there's a confusingly
6 similar name?
7 A. Correct.
8 Q. Do you know who is involved in that
9 process?
10 A. I would guess Mr. Allred and Mr. Shuck,
11 if they notice it.
12 Q. Anyone else, to your knowledge?
13 A. Really whoever notices it in a
14 publication or an e-mail blast or visiting a
15 website.
16 Q. And --
17 A. But those would be referred to Mr. Allred
18 for review.
19 Q. And do you know if there's anybody who's
20 monitoring, you know, what dental labs are doing,
21 doing searches, looking for confusingly similar
22 names?

Page 142

1 A. I'm not aware of an active search, but we
2 all read the trade publications, and that's
3 typically where the ads are placed.
4 Q. So basically anybody within Glidewell who
5 sees such a thing knows they should bring it to
6 the attention of Mr. Allred. Is that fair?
7 A. People at Glidewell Direct would know,
8 yes.
9 Q. And Mr. Shuck would know?
10 A. Of course.
11 Q. I think I asked you this before, but a
12 non-authorized lab certainly can describe a
13 monolithic zirconia dental restoration in their
14 advertising as being suitable for bruxers meaning
15 patients of bruxism; correct?
16 A. Yes.
17 Q. It's not every use of the word "bruxer"
18 that might be problematic; correct?
19 A. Yes.
20 MR. JANKOWSKI: Let me hand you what the
21 court reporter has marked as Exhibit 107. This is
22 an e-mail sent by Keith Allred on April 29, 2011,

Page 143

1 to somebody named Daxton.
2 (Bartolo Exhibit No. 107 was marked
3 for identification.)
4 BY MR. JANKOWSKI:
5 Q. This is an excerpt from a document
6 Glidewell produced in this case. It was part of a
7 large document or series of e-mails. I took it
8 out just to have the one e-mail. But it's easily
9 identifiable within Glidewell's production if we
10 needed to find it.
11 Mr. Bartolo, do you recognize Exhibit 107
12 as a communication you've seen?
13 A. I don't.
14 Q. The message here -- well, first of all,
15 you do recognize this looks like the type of
16 communication that Mr. Allred is making with a lab
17 who's not an authorized Glidewell lab?
18 A. Yes, I recognize that, but I don't
19 recognize this particular instance.
20 Q. Understood.
21 I see one message that Mr. Allred has
22 here is -- I'm just reading from the exhibit. "If

Page 144

1 you'd like to learn about the benefits of becoming
2 an authorized BruxZir, Robin Bartolo would love to
3 hear from you."
4 Do you see that?
5 A. Yes, I do.
6 Q. And that's consistent with what we've
7 been discussing?
8 A. Totally consistent.
9 Q. If there's an issue with a potentially
10 confusingly similar name, you get involved on the
11 business side to see if they want to become an
12 authorized lab; correct?
13 A. Yes.
14 MR. JANKOWSKI: Let me hand you what the
15 court reporter has marked as Exhibit 108. This is
16 a string of e-mails. The top one is from
17 Mr. Allred to Rudy@pittmandental.com. This was
18 sent on February 14, 2011.
19 (Bartolo Exhibit No. 108 was marked
20 for identification.)
21 BY MR. JANKOWSKI:
22 Q. Mr. Bartolo, this particular e-mail it

Page 145

Pages 142 to 145

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 looks like you were cc'd on it.
2 Do you see that?
3 A. I do.
4 Q. Do you recall seeing this e-mail?
5 A. Yes.
6 Q. And Pitman Dental is one of these labs
7 which is not, at least certainly wasn't at the
8 time this e-mail was sent by Mr. Allred, was not
9 an authorized lab; correct?
10 A. That's correct.
11 Q. Do you recall having or being part of the
12 communications with Pitman Dental?
13 A. No.
14 Q. Do you have an understanding for how
15 Glidewell learned about Pitman Dental using the
16 mark R-brux?
17 A. No.
18 Q. Did you have a phone call with anybody at
19 Pitman Dental as you discussed?
20 A. I suspect I had, but I don't recall.
21 Q. Maybe you did, maybe you didn't. You
22 don't recall.

Page 146

1 Do you know whether Pitman Dental has
2 become an authorized Glidewell lab?
3 A. I don't. I'd have to look at the list.
4 Q. I think you already testified to this,
5 but you weren't involved in the decision-making
6 process deciding whether Pitman Dental's mark was
7 confusingly similar; is that correct?
8 A. No, I was not.
9 Q. If you turn towards the end of -- well,
10 it's not actually towards the end.
11 A. You want to go to RDent next?
12 Q. Exactly.
13 There's a reference towards the back to
14 RDent.
15 Do you see that?
16 A. Yes. What page are you on? 58?
17 Q. 58.
18 A. Okay.
19 Q. Of 99.
20 This is another one where here it looks
21 like now we see who Daxton was from Exhibit 107,
22 Daxton Grubb.

Page 147

1 Do you see that?
2 A. Yes.
3 Q. You can see he's writing both to
4 Mr. Allred and to you. So here the issue is a
5 mark R-brux.
6 Do you see that?
7 A. Yes.
8 Q. And did you personally make any
9 assessment as to whether R-brux is confusingly
10 similar in your mind to BruxZir?
11 A. I did not.
12 Q. That's not your role?
13 A. No.
14 Q. Turning to page 60 of 99, I see a
15 communication again that is similar to what we've
16 been discussing namely at the bottom there
17 Mr. Allred is writing to Mr. Grubb and he states,
18 "I let Robin Bartolo know you are interested to
19 know more about the milling blanks for BruxZir
20 crowns and bridges."
21 Do you see that?
22 A. Yes.

Page 148

1 Q. Again, that is kind of the goal of you
2 being involved that hopefully they'll sign up and
3 start purchasing the BruxZir milling blanks; is
4 that correct?
5 A. That is correct.
6 Q. Okay.
7 MR. JANKOWSKI: Next I'd like to hand you
8 what the court reporter has marked as Exhibit 109.
9 This is an e-mail from Mr. Allred to
10 lab@assuredPDX.com, and it looks like there's a cc
11 to Robin Bartolo.
12 (Bartolo Exhibit No. 109 was marked
13 for identification.)
14 BY MR. JANKOWSKI:
15 Q. Mr. Bartolo do you recall receiving the
16 document Exhibit 109?
17 A. I did. I got cc'd on it.
18 Q. Do you recall seeing it?
19 A. Sure.
20 Q. And if you look at the letter that
21 Mr. Allred has put together, in this case, it
22 looks like the mark at issue that might be

Page 149

Pages 146 to 149

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 potentially confusingly similar is Z-brux.
2 Do you see that?
3 A. Yes.
4 Q. Again, did you make any kind of
5 determination yourself whether Z-BruX is
6 confusingly similar to BruXZir?
7 A. I did not.
8 Q. Turning to the last page of Exhibit 109,
9 the very last paragraph from Mr. Allred -- or at
10 least above "Your prompt attention is
11 appreciated," the last line says, "Additionally,
12 if you wish to be on the list of BruXZir
13 authorized dental laboratories, call Glidewell
14 Direct."
15 Do you see that?
16 A. I do.
17 Q. Saying "call Glidewell Direct" is kind of
18 a way of saying call Robin Bartolo; correct?
19 A. Yes. You can make that statement.
20 Q. You are Glidewell Direct for purposes of
21 this and, in fact, that's probably why you're
22 being cc'd on the e-mail; correct?

Page 150

1 A. Yes.
2 Q. Would you have followed up with a phone
3 call to this person?
4 A. Yeah.
5 Q. Do you recall whether you --
6 A. I suspect that I did make a phone call.
7 Q. Do you recall making a phone call to
8 Assured?
9 A. Who was the person's name that this was
10 sent to?
11 Q. I don't see a name. I see president
12 there.
13 A. Yeah.
14 Q. There is -- Assured Dental Lab is in
15 Portland, Oregon.
16 A. I suspect I made a phone call, whether I
17 talked to the president or someone else, I do not
18 recall.
19 Q. Do you know whether Assured Dental Lab
20 has become an authorized Glidewell dental lab?
21 A. I don't know.
22 Q. You don't know.

Page 151

1 MR. JANKOWSKI: I'm going to hand you
2 another document the court reporter has marked as
3 Exhibit 110. This is some e-mails including Keith
4 Allred associated with a dental lab called
5 Authentic. And on at least one of the e-mails you
6 appear to be cc'd.
7 (Bartolo Exhibit No. 110 was marked
8 for identification.)
9 BY MR. JANKOWSKI:
10 Q. Mr. Bartolo, do you recall seeing
11 communications between Mr. Allred and Authentic
12 Lab as reflected in Exhibit 110?
13 A. Yes.
14 Q. And this is also dated from April, 2011.
15 Do you see that?
16 A. Yes.
17 Q. Does that seem accurate on when you
18 recall seeing these communications?
19 A. It does appear accurate.
20 Q. And here it looks like the potentially
21 confusing mark is just a reference to BruX crowns.
22 Do you see that?

Page 152

1 A. Yes, I do.
2 Q. Again, just for the record, were you
3 involved in any way in deciding whether brux with
4 a capital B-r-u-x crowns was confusingly similar
5 to BruXZir?
6 A. I was not.
7 Q. Did you have phone calls with Authentic
8 Dental lab for the purpose of trying to enlist
9 them as an authorized Glidewell laboratory?
10 A. I believe so, yes.
11 Q. And do you recall how those conversations
12 went? Did they get signed up?
13 A. No, they just changed the name. They've
14 taken the information off their website.
15 Q. So this is an example of a third party
16 changing their name?
17 A. Correct.
18 Q. I think you said -- do you have a sense
19 what percentage of the time the lab who gets a
20 communication from you or Mr. Allred associated
21 with a confusingly or potentially confusingly
22 similar mark signs up as an authorized lab?

Page 153

Pages 150 to 153

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. I would guess it's a 50/50. Half of them</p> <p>2 change their name and the other half maybe joins</p> <p>3 in. Maybe it's a bit optimistic. Maybe it's not</p> <p>4 quite as many. There's not a predominance of one</p> <p>5 or the other.</p> <p>6 Q. And your recollection is this particular</p> <p>7 lab changed its name?</p> <p>8 A. Yes, correct.</p> <p>9 Q. Do you know what name they call their</p> <p>10 full contour zirconia crowns today?</p> <p>11 A. I do not.</p> <p>12 Q. Are you part of any monitoring of these</p> <p>13 parties as to what they do after these</p> <p>14 interactions?</p> <p>15 A. No. If they've changed their name, that</p> <p>16 satisfies Mr. Allred, and we don't pursue that</p> <p>17 further.</p> <p>18 Q. Let me show you what's previously been</p> <p>19 marked as Exhibit 10. It's a printout from the</p> <p>20 BruxZir.com website. It appears to be a listing</p> <p>21 of authorized BruxZir labs. Can you just confirm</p> <p>22 for me that that is what this is?</p> <p style="text-align: right;">Page 154</p>	<p>1 A. It is.</p> <p>2 Q. Why did you send this letter to</p> <p>3 Mr. Keating?</p> <p>4 A. I was following up on a telephone</p> <p>5 conversation I had with Mr. Keating about the use</p> <p>6 of the KDZ Bruxer branding and suggested that he</p> <p>7 could use the BruxZir brand and join the</p> <p>8 authorized laboratory list. I sent him some</p> <p>9 product; so he could evaluate it and see if he</p> <p>10 liked the results he got and hoping that if he did</p> <p>11 see the result, that he would want to join the</p> <p>12 list of authorized laboratories.</p> <p>13 Q. So the BruxZir you're referring to is</p> <p>14 BruxZir; correct?</p> <p>15 A. Correct.</p> <p>16 Q. What did Mr. Keating say to you on the</p> <p>17 phone? Do you recall?</p> <p>18 A. Yeah, I do. We had a pleasant</p> <p>19 conversation. He said he'd evaluate the product</p> <p>20 when he received it, and he would let me know.</p> <p>21 Q. So your phone call was prompted by</p> <p>22 Keating Dental's use of the mark KDZ Bruxer, on a</p> <p style="text-align: right;">Page 156</p>
<p>1 A. It is.</p> <p>2 Q. This is at least at one point in time a</p> <p>3 listing of the authorized labs we've been talking</p> <p>4 about today?</p> <p>5 A. That's correct.</p> <p>6 Q. This list will actually change over time</p> <p>7 a little bit. Labs can get added and you</p> <p>8 testified about how if they stop buying product,</p> <p>9 they can also be dropped?</p> <p>10 A. Right.</p> <p>11 Q. Okay. Next I'd like to show you an</p> <p>12 exhibit that's been previously marked as</p> <p>13 Exhibit 29. This is a letter dated August 9, 2011</p> <p>14 to -- I believe this is to Sean Keating. This is,</p> <p>15 I believe, from you. In fact, I think you</p> <p>16 testified you had reviewed one document in</p> <p>17 preparation for your deposition today.</p> <p>18 Was this the one document that you</p> <p>19 reviewed?</p> <p>20 A. This is the document.</p> <p>21 Q. Okay. And so is this a letter that you</p> <p>22 sent to Mr. Keating?</p> <p style="text-align: right;">Page 155</p>	<p>1 full zirconia dental restoration; is that correct?</p> <p>2 A. It is.</p> <p>3 Q. How did Glidewell find out that Keating</p> <p>4 Dental was using that mark?</p> <p>5 A. He placed an ad in one of the trade</p> <p>6 journals.</p> <p>7 Q. And somebody at Glidewell saw it?</p> <p>8 A. Right.</p> <p>9 Q. Do you know who?</p> <p>10 A. I'm guessing. Mr. Shuck.</p> <p>11 Q. And who asked you to call Mr. Keating?</p> <p>12 A. Mr. Shuck.</p> <p>13 Q. Now, procedurally this seems a little</p> <p>14 different than the other communications we were</p> <p>15 looking at in the previous exhibits; right?</p> <p>16 A. Right.</p> <p>17 Q. What's your understanding as to why you</p> <p>18 end up writing this follow-up letter, or do you</p> <p>19 have more follow-up letters like this to parties</p> <p>20 like this? In other words, it seems like</p> <p>21 Mr. Allred is the one communicating mostly?</p> <p>22 A. Right.</p> <p style="text-align: right;">Page 157</p>

Pages 154 to 157

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Q. Why are you the sender of the letter
2 shown as Exhibit 29?
3 A. I usually follow up conversations with a
4 letter; so it's not that unusual. I was asked to
5 make a phone call and see if I could reach Sean.
6 I did. We had a nice conversation. I sent a
7 follow-up letter. I don't think it's all that
8 unusual.
9 Q. But have you done that with other dental
10 labs that were using marks that Glidewell deemed
11 confusingly similar?
12 A. Yes. I testified to that. I've made
13 phone calls in the past.
14 Q. Not the phone calls. I'm talking about
15 the follow-up letters like Exhibit 29. Do you
16 recall whether you've sent letters like this?
17 A. I'm sure I have, but it's not a common
18 process. So if I'm involved, there's probably an
19 e-mail. They don't always require my attention.
20 The one exhibit you showed earlier showed that the
21 laboratory changed the mark or changed the
22 information on their website or pulled it off.
Page 158

1 There's no need for me to call them.
2 MR. JANKOWSKI: Mr. Tachner, let me just
3 ask if Mr. Bartolo has sent more letters like
4 Exhibit 29 associated with these other dental labs
5 associated with these communications, I'd like
6 them to be produced.
7 MR. TACHNER: Sure.
8 Do you know what he's asking for?
9 THE WITNESS: I guess I'll have to look
10 through some of my files to see if I sent some of
11 these letters. There's not going to be many.
12 BY MR. JANKOWSKI:
13 Q. If you sent them --
14 A. I'll have to look for you.
15 MR. TACHNER: Sure. We'll comply
16 assuming he can find these letters, yes.
17 BY MR. JANKOWSKI:
18 Q. I'm just pointing out from what's been
19 produced to us, this stands out as an unusual
20 letter. We don't have other Robin Bartolo letters
21 being provided to dental labs that have used marks
22 that are potentially confusingly similar to
Page 159

1 BruxZir. We have this one only.
2 A. Right.
3 Q. If there's more --
4 A. No. I was referring to there's maybe
5 e-mails or other things I've communicated with
6 some of these exhibits you brought up. This
7 letter is what it is. It's just a follow-up to a
8 phone call I made to Sean Keating.
9 MR. JANKOWSKI: If that can be
10 investigated --
11 MR. TACHNER: We will. Would you do
12 that?
13 THE WITNESS: Sure.
14 BY MR. JANKOWSKI:
15 Q. One thing I see which is also different
16 in this letter is you testified earlier that
17 people could change their name or they could start
18 buying the product.
19 A. Yes.
20 Q. And here in the final paragraph, this
21 message to Mr. Keating looks a little different
22 than that. Isn't that correct?
Page 160

1 A. I don't see it that way.
2 Q. What it says is and I'll just read it
3 here, "If you cancel your trademark application
4 for KDZ Bruxer and use BruxZir materials and the
5 BruxZir trademark instead, we will not pursue
6 legal action."
7 Do you see that?
8 A. I do.
9 Q. So this one is saying cancel your
10 trademark and use BruxZir materials. Not or. Or
11 am I reading too much into the "and"?
12 A. It's not the intent. This is a follow-up
13 to a detailed conversation when we talked about
14 both options, changing to KDZ anything else or
15 possibly entertaining the notion of joining, and I
16 just summarized the key points. I'm sure you can
17 read into it your point, but it was certainly not
18 the way the conversation went, and it's certainly
19 not what was intended here.
20 Q. Your intent was not to treat Keating
21 Dental Arts any different than any of these other
22 third parties?
Page 161

Pages 158 to 161

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. Not at all.</p> <p>2 Q. Under that interpretation, the "and" in</p> <p>3 that first sentence of the final paragraph perhaps</p> <p>4 a little more accurately could be an "or." Is</p> <p>5 that a fair way the way you think the letter</p> <p>6 should be read?</p> <p>7 A. Sure.</p> <p>8 Q. Did you have any follow-up communications</p> <p>9 with Mr. Keating?</p> <p>10 A. I sent him a follow-up e-mail asking if</p> <p>11 he had a chance to evaluate the blocks and liquid</p> <p>12 I sent him.</p> <p>13 Q. Did Mr. Keating respond to that?</p> <p>14 A. He did not.</p> <p>15 Q. And did you have any other communications</p> <p>16 with Mr. Keating about this?</p> <p>17 A. No.</p> <p>18 Q. And, to your knowledge, did Mr. Keating</p> <p>19 respond to anybody else at Glidewell associated</p> <p>20 with this issue?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Now, when you spoke with Mr. Keating, did</p> <p style="text-align: right;">Page 162</p>	<p>1 A. I've known Mr. Jackson going back to my</p> <p>2 days at Vident as a representative, and I know</p> <p>3 Mr. Jackson in relation to Glidewell Laboratories</p> <p>4 as an authorized BruxZir laboratory.</p> <p>5 Q. And, in fact, it's fair to say that</p> <p>6 Mr. Jackson is not a typical authorized lab owner.</p> <p>7 Isn't that fair to say?</p> <p>8 A. In which way?</p> <p>9 Q. Well, he's closer to Glidewell than most</p> <p>10 of the authorized labs?</p> <p>11 A. He's very supportive, yes.</p> <p>12 Q. And, in fact, Glidewell -- he's kind of a</p> <p>13 major supporter of Glidewell, almost an extension</p> <p>14 of Glidewell Direct, isn't he?</p> <p>15 A. I wouldn't go that far. He's a supporter</p> <p>16 of the BruxZir brand, and he's enjoyed the benefit</p> <p>17 of that association with the program, but he's not</p> <p>18 an extension of Glidewell Direct.</p> <p>19 Q. Do you know whether he participates in</p> <p>20 kind of monitoring the use of marks that might be</p> <p>21 confusingly similar to the BruxZir mark?</p> <p>22 A. I don't know about monitoring, but we all</p> <p style="text-align: right;">Page 164</p>
<p>1 he say to you that he didn't think the mark KDZ</p> <p>2 Bruxer was confusingly similar to Glidewell's</p> <p>3 mark?</p> <p>4 A. I'm sure he did say that. That was his</p> <p>5 position.</p> <p>6 Q. Did you provide Glidewell's position</p> <p>7 which is, I guess, the opposite of his position?</p> <p>8 A. That's correct.</p> <p>9 Q. And so you said you sent a follow-up</p> <p>10 e-mail. Was that the last communication, then,</p> <p>11 between the two of you?</p> <p>12 A. That's correct.</p> <p>13 Q. A few more questions here. Are you</p> <p>14 familiar with a person associated with an</p> <p>15 authorized laboratory of Glidewell known as Mark</p> <p>16 Jackson?</p> <p>17 A. I do.</p> <p>18 Q. Who is Mr. Jackson?</p> <p>19 A. He's the president of Precision Dental</p> <p>20 Ceramics.</p> <p>21 Q. And how is it that you know of</p> <p>22 Mr. Jackson?</p> <p style="text-align: right;">Page 163</p>	<p>1 read the same trade journals, and if it comes to</p> <p>2 his attention, he might bring it to ours.</p> <p>3 Q. Right.</p> <p>4 So when you said "we" there, "we" would</p> <p>5 be Glidewell --</p> <p>6 A. Glidewell.</p> <p>7 Q. It also might include Mr. Jackson;</p> <p>8 correct?</p> <p>9 A. I was talking about Mr. Jackson. He</p> <p>10 might notice something.</p> <p>11 Q. If he noticed it, he would tell</p> <p>12 Glidewell; right?</p> <p>13 A. He might, yes.</p> <p>14 MR. JANKOWSKI: Let me just, on that</p> <p>15 score, have the court reporter mark as</p> <p>16 Exhibit 111. This is a printout from the Dental</p> <p>17 Lab Network which is a forum for dental lab</p> <p>18 owners, I think, to post on the Internet.</p> <p>19 (Bartolo Exhibit No. 111 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. JANKOWSKI:</p> <p>22 Q. Mr. Bartolo, you're familiar with the</p> <p style="text-align: right;">Page 165</p>

Pages 162 to 165

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 Dental Lab Network, which is reflected here in
2 Exhibit 111; correct?
3 A. Yes, I am.
4 Q. Is that a fair characterization that
5 dental lab owners will go on here and share their
6 experiences and dental lab issues?
7 A. Some dental labs will.
8 Q. Do you know if people for Glidewell post
9 on here?
10 A. I don't believe we did.
11 Q. Is there a policy to not post on here?
12 A. There's no policy, but we don't.
13 Q. This is a particular series of postings
14 which starts off with somebody asking a question
15 about glazing a BruxZir crown.
16 Do you see that on the front page?
17 A. I do.
18 Q. And as you go down, there's a lot of --
19 have you ever seen this series of posts before?
20 A. I've seen posts. I don't know if it's
21 this one.
22 Q. Are you aware that Mark Jackson's a very
Page 166

1 active poster on this?
2 A. Yes, I'm aware of that, yes.
3 Q. And if you turn to -- well, the easiest
4 way to find it, do you see how the posts are
5 numbered? If you go to post No. 15. It's about
6 ten pages in, maybe a little less than that.
7 There appears to be a post from Mark Jackson,
8 senior member.
9 Do you see that?
10 A. Not yet.
11 Q. Oh, okay.
12 A. I see numbers -- oh, here. You said post
13 15. Okay. I found it. Yes.
14 Q. Do you see how there's a little
15 indication there that the poster is Mark Jackson?
16 A. Yes.
17 Q. And there's a little picture below?
18 A. Yes.
19 Q. Does that look like the Mark Jackson you
20 know?
21 A. It is the Mark Jackson I know.
22 Q. If you look at what he puts here in this
Page 167

1 posting -- first of all, he gives what looks like
2 a technical response about glazing a BruxZir
3 restoration. He's basically giving the
4 explanation to review your BruxZir training
5 materials or ask them from the lab who's milling
6 your BruxZir for you.
7 Do you see that?
8 A. Yes.
9 Q. Then he says, I'm just reading from his
10 post, "If you are using another zirconia and
11 calling it BruxZir or filling Rx's for BruxZir
12 with another material, you are breaking the law."
13 Do you see that?
14 A. I do.
15 Q. In this aspect, Mr. Jackson's almost
16 acting like an agent for Glidewell. Isn't that
17 correct?
18 A. I don't see it that way. He's made a
19 significant investment in the materials and
20 equipment, and he's protecting that investment.
21 Q. He's certainly being an advocate for
22 Glidewell; correct?

Page 168

1 A. Yes.
2 Q. And certainly an advocate for Glidewell's
3 mark BruxZir; correct?
4 A. Yes.
5 Q. If you turn to the next page, you'll see
6 a post number 16 also from Mr. Jackson. He's
7 responding to a post from another poster, and he
8 says, I'm just reading again from the document,
9 "That's because you are trying to make a
10 counterfeit BruxZir crown. If you had the real
11 material, this would not be a problem."
12 So, again, by calling it a counterfeit,
13 this is Mr. Jackson trying to dissuade somebody
14 from using an all zirconia product which is not a
15 Glidewell product; correct?
16 A. Yeah, but I don't know which material
17 he's referring to. As we discussed earlier, if
18 you used a material meant for a framework and
19 tried to make a full contour zirconia, it would
20 not look good at all. So I'm not sure which shiny
21 chalk he's referring to.
22 Q. Why do you suppose he's calling it a

Page 169

Pages 166 to 169

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 counterfeit BruxZir crown?</p> <p>2 A. I don't know.</p> <p>3 Q. I don't know either. I find that very</p> <p>4 odd, and because certainly the lab is allowed to</p> <p>5 use zirconia from a source other than Glidewell;</p> <p>6 correct?</p> <p>7 A. They can.</p> <p>8 Q. It's not counterfeiting to use another</p> <p>9 source of zirconia; correct?</p> <p>10 A. It's not. But he asked the question</p> <p>11 about a BruxZir crown. So if he's not using the</p> <p>12 BruxZir material, it's not a BruxZir crown. They</p> <p>13 can call it a full contour Lava crown if they'd</p> <p>14 like. You can use any material you like. I mean</p> <p>15 it's hard to read the flow of the thread if we</p> <p>16 don't know what material he's referencing.</p> <p>17 Q. I see what you're saying.</p> <p>18 You're saying the person can be dealing</p> <p>19 with a non-Glidewell zirconia that they're</p> <p>20 referring to as BruxZir; correct?</p> <p>21 A. Correct. Because they're asking how to</p> <p>22 glaze it and suggesting it doesn't look very</p> <p style="text-align: right;">Page 170</p>	<p>1 improvement by Glidewell Laboratories on making</p> <p>2 more transparent looking zirconia. Is that fair?</p> <p>3 A. That is fair.</p> <p>4 Q. So, again, in this instance, Mr. Jackson</p> <p>5 is essentially just doing a nice bit of marketing</p> <p>6 job for Glidewell. Isn't that fair?</p> <p>7 A. He's a strong supporter of the brand,</p> <p>8 yes.</p> <p>9 Q. Do you know whether Glidewell coordinates</p> <p>10 with Mr. Jackson at all to provide postings like</p> <p>11 this?</p> <p>12 A. No, we do not.</p> <p>13 Q. When you say "we do not," do you know</p> <p>14 that you do not or you just don't know?</p> <p>15 A. I do not.</p> <p>16 Q. You don't know?</p> <p>17 A. No, I do not coordinate with Mr. Jackson.</p> <p>18 Q. Do you know whether Mr. Shuck coordinates</p> <p>19 with Mr. Jackson?</p> <p>20 A. I don't believe Mr. Shuck does, no.</p> <p>21 Q. Do you know or you're just speculating?</p> <p>22 A. We don't tell Mr. Jackson what to write</p> <p style="text-align: right;">Page 172</p>
<p>1 aesthetic.</p> <p>2 Q. Right. I agree with you. It's not easy</p> <p>3 to follow the thread. It's quite possible that</p> <p>4 that's exactly right. This is an instance of</p> <p>5 somebody using BruxZir to talk about somebody</p> <p>6 else's zirconia?</p> <p>7 A. Right.</p> <p>8 MR. JANKOWSKI: Let me have the court</p> <p>9 reporter mark as Exhibit 112 another printout from</p> <p>10 the Dental Lab Network. This one with an original</p> <p>11 date of what appears to be February 15, 2011.</p> <p>12 (Bartolo Exhibit No. 112 was marked</p> <p>13 for identification.)</p> <p>14 BY MR. JANKOWSKI:</p> <p>15 Q. Mr. Bartolo, if you just look at this,</p> <p>16 you'll see in this instance what looks like the</p> <p>17 post No. 1 is now coming from Mark Jackson. If</p> <p>18 you look on page 2, you see Mr. Jackson's face?</p> <p>19 This is the same Mr. Jackson; correct?</p> <p>20 A. It is.</p> <p>21 Q. If you look at his posting, it's a very</p> <p>22 lengthy post about what appears to be an</p> <p style="text-align: right;">Page 171</p>	<p>1 in his posts.</p> <p>2 Q. To your knowledge, Glidewell doesn't</p> <p>3 write copy for him to post?</p> <p>4 A. That, I can answer. We definitely do</p> <p>5 not.</p> <p>6 MR. JANKOWSKI: I'll have the court</p> <p>7 reporter mark as Exhibit 113 another printout from</p> <p>8 the Dental Lab Network. This one with an original</p> <p>9 post of September 13, 2012.</p> <p>10 (Bartolo Exhibit No. 113 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. JANKOWSKI:</p> <p>13 Q. Mr. Bartolo, you agree this is another</p> <p>14 printout from the Dental Lab Network?</p> <p>15 A. I do.</p> <p>16 Q. This one is on a topic called, "BruxZir</p> <p>17 Staining."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And the first question is about using</p> <p>21 Ivoclar universal stain for BruxZir crowns.</p> <p>22 Do you see that?</p> <p style="text-align: right;">Page 173</p>

Pages 170 to 173

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 A. I do.</p> <p>2 Q. Is that a product which is appropriate to</p> <p>3 use on Glidewell's BruxZir crowns?</p> <p>4 A. It is.</p> <p>5 Q. Somebody's asking about a stain that</p> <p>6 works well on BruxZir which is, I guess, the kind</p> <p>7 of question you would expect on a forum like this;</p> <p>8 correct?</p> <p>9 A. Uh-huh.</p> <p>10 Q. The second post appears to be somebody</p> <p>11 saying, "Paging Mark Jackson."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. That's probably somebody interjecting a</p> <p>15 little humor because they know Mr. Jackson posts</p> <p>16 frequently on things associated with Glidewell's</p> <p>17 BruxZir product; correct?</p> <p>18 A. Yes.</p> <p>19 Q. If you get -- if you turn the page, the</p> <p>20 second page of the document, you'll see, true to</p> <p>21 form, Mr. Jackson does post in the bottom of the</p> <p>22 second page, and he starts talking about the</p> <p style="text-align: right;">Page 174</p>	<p>1 an educational capacity associated with talking to</p> <p>2 authorized labs more generally. Is that accurate?</p> <p>3 A. He was invited to share his experience</p> <p>4 with the system at that BruxZir Summit, yes.</p> <p>5 Q. And what's your understanding as to why</p> <p>6 he was invited to do that?</p> <p>7 A. He's enjoyed good success with the</p> <p>8 BruxZir system; so it's nice for them to hear from</p> <p>9 a fellow user how well it's worked for him.</p> <p>10 MR. JANKOWSKI: Let me just have the</p> <p>11 court reporter mark as Exhibit 114 an excerpt of a</p> <p>12 presentation. Basically, it's associated with a</p> <p>13 presentation at the Glidewell international</p> <p>14 technology center. This one is May, 2012. It</p> <p>15 includes in this what looks to be an agenda, and</p> <p>16 the front page of the presentation appears to be</p> <p>17 by Mr. Jackson.</p> <p>18 (Bartolo Exhibit No. 114 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. JANKOWSKI:</p> <p>21 Q. Mr. Bartolo, is this exactly what you're</p> <p>22 talking about? He gave a presentation here?</p> <p style="text-align: right;">Page 176</p>
<p>1 BruxZir system.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And he says something here that I think</p> <p>5 you actually testified to a little bit ago which</p> <p>6 is he says, "BruxZir system is a system," all</p> <p>7 caps. "All the parts work together and give great</p> <p>8 results. Once you start mixing and matching, it's</p> <p>9 no longer a BruxZir crown. It's a Frankencrown."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. So I think that's his colorful way of</p> <p>13 saying if you're not buying into the whole system,</p> <p>14 you may get a product which he's analogizing to</p> <p>15 Frankenstein, which is not the high quality you</p> <p>16 want it to be. Is that a fair characterization?</p> <p>17 A. It is fair.</p> <p>18 Q. And, again, to the extent Mr. Jackson's</p> <p>19 posting on here, you believe he's doing this</p> <p>20 independently of Glidewell; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Now, Mr. Jackson has functioned in</p> <p style="text-align: right;">Page 175</p>	<p>1 A. Yeah. He was the opening speaker for</p> <p>2 15 minutes.</p> <p>3 Q. He was the opening speaker, and you were</p> <p>4 the follow-up?</p> <p>5 A. I was.</p> <p>6 Q. So you were there for Mr. Jackson's</p> <p>7 presentation?</p> <p>8 A. I was.</p> <p>9 Q. The topic he was presenting on was</p> <p>10 BruxZir partnering, maximizing the relationship;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Again, this shows that he's kind of a</p> <p>14 special lab or maybe a very devoted authorized</p> <p>15 lab. Is that fair?</p> <p>16 A. Yeah, you can call it that. He happens</p> <p>17 to also be local which helps. There's other labs</p> <p>18 we could have invited.</p> <p>19 Q. That's a good question.</p> <p>20 Have any other authorized labs been</p> <p>21 invited to give presentations like Mr. Jackson was</p> <p>22 invited to do?</p> <p style="text-align: right;">Page 177</p>

Pages 174 to 177

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

1 A. We've only done two summits. So it was
2 the first and only time.
3 Q. Okay.
4 MR. JANKOWSKI: That's all I have. I
5 have no further questions.
6 THE WITNESS: Great. Thank you.
7 MR. TACHNER: I have one or two
8 questions.
9 EXAMINATION
10 BY MR. TACHNER:
11 Q. Mr. Bartolo, earlier you testified that
12 Glidewell Labs has no monitoring system for its
13 approved labs. Isn't that correct?
14 A. Monitoring? Could you repeat that,
15 please?
16 Q. You said that Glidewell Labs will help
17 answer questions --
18 A. Yes.
19 Q. -- of labs, but it has no formal
20 monitoring system.
21 A. Correct.
22 Q. So how do you keep track of the quality
Page 178

1 of the crowns that the approved labs make out of
2 BruxZir material?
3 A. Well, the doctor's going to select the
4 labs they want to work with. We've promoted the
5 brand. We've given out samples. They know what
6 it looks like. The look and feel of a BruxZir
7 crown is very different from the other brand; so
8 if the doctor doesn't receive that, he's going to
9 change labs and pick a different one. There's a
10 self-monitoring. There's an expectation that it's
11 going to be more translucent and aesthetic. If
12 they don't get that, they'll probably use a
13 different laboratory.
14 Q. How will you learn of that?
15 A. Either our salesgirl or the partner lab's
16 salesgirl because they pick up a new account.
17 Q. Would you learn anything about the lab
18 that didn't produce the proper crown? In other
19 words, will you get any feedback from the lab that
20 lost the doctor's account?
21 A. Typically not. We do get feedback from
22 laboratories wanting to improve the technique, and
Page 179

1 we'll help them the best that we can.
2 Q. When the doctor cancels his account or
3 stops buying from an approved lab --
4 A. Are we talking about approved labs?
5 Q. Yes.
6 A. Approved lab would give the right
7 product; so there's not going to be an issue.
8 Well, the approved labs using the BruxZir block,
9 the BruxZir liquid following the system; so the
10 outcome should be good.
11 Q. That's the answer to my question.
12 MR. TACHNER: Thank you. No more
13 questions.
14 MR. JANKOWSKI: I have nothing further.
15 (At 1:20 p.m. the deposition of Robin
16 Bartolo was concluded.)
17
18
19
20
21
22
Page 180

1 REPORTER'S CERTIFICATE
2
3 I, LISA MOSKOWITZ, CSR No. 10816, RPR,
4 CLR, in and for the State of California, do hereby
5 certify:
6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly
8 sworn to testify the truth, the whole truth and
9 nothing but the truth;
10 That said deposition was taken down by me
11 in shorthand at the time and place therein named
12 and thereafter reduced to typewriting under my
13 direction, and the same is true, correct, and
14 complete transcript of said proceedings;
15 I further certify that I am not interested
16 in the event of the action.
17 Witness my hand this 29th day of October,
18 2012.
19
20
21
22
Certified Shorthand
Reporter for the
State of California
Page 181

Pages 178 to 181

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

<p>1 Robin Bartolo c/o</p> <p>2 Leonard Tachner PLC</p> <p>17961 Sky Park Circle, Suite 38-E</p> <p>3 Irvine, CA 92614-6364</p> <p>4</p> <p>5 Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.</p> <p>6 Date of deposition: October 23, 2012</p> <p>Deponent: Robin Bartolo</p> <p>7</p> <p>8 Please be advised that the transcript in the above</p> <p>9 referenced matter is now complete and ready for signature.</p> <p>10 The deponent may come to this office to sign the transcript,</p> <p>11 a copy may be purchased for the witness to review and sign,</p> <p>or the deponent and/or counsel may waive the option of signing.</p> <p>12 Please advise us of the option selected.</p> <p>Please forward the errata sheet and the original signed</p> <p>13 signature page to counsel noticing the deposition, noting the applicable</p> <p>14 time period allowed for such by the governing Rules of Procedure.</p> <p>15 If you have any questions, please do not hesitate to call our office at</p> <p>16 (202)-232-0646.</p> <p>17</p> <p>18 Sincerely,</p> <p>19</p> <p>20 Digital Evidence Group</p> <p>21 Copyright 2012 Digital Evidence Group</p> <p>22 Copying is forbidden, including electronically, absent express written consent</p> <p style="text-align: right;">Page 182</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1726 M Street NW, Suite 1010</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5</p> <p style="text-align: center;">E R R A T A S H E E T</p> <p>6</p> <p>7</p> <p>Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.</p> <p>8 Witness Name: Robin Bartolo</p> <p>9 Deposition Date: October 23, 2012</p> <p>10 Page No. Line No. Change</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Signature Date</p> <p style="text-align: right;">Page 184</p>
<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1726 M Street NW, Suite 1010</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 SIGNATURE PAGE</p> <p>7</p> <p>8</p> <p>Case: James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.</p> <p>9 Witness Name: Robin Bartolo</p> <p>Deposition Date: October 23, 2012</p> <p>10</p> <p>I do hereby acknowledge that I have read</p> <p>11 and examined the foregoing pages</p> <p>of the transcript of my deposition and that:</p> <p>12</p> <p>(Check appropriate box):</p> <p>13 () The same is a true, correct and</p> <p>complete transcription of the answers given by</p> <p>14 me to the questions therein recorded.</p> <p>15 () Except for the changes noted in the</p> <p>16 attached Errata Sheet, the same is a true,</p> <p>17 correct and complete transcription of the</p> <p>18 answers given by me to the questions therein</p> <p>19 recorded.</p> <p>20</p> <p>21 _____</p> <p>22 DATE WITNESS SIGNATURE</p> <p style="text-align: right;">Page 183</p>	

Pages 182 to 184

10/23/2012

James R. Glidewell Dental Ceramics, Inc. v. Keating Dental Arts, Inc.

Robin Bartolo

Page 181

REPORTER'S CERTIFICATE

I, LISA MOSKOWITZ, CSR No. 10816, RPR,
CLR, in and for the State of California, do hereby
certify:

That, prior to being examined, the witness
named in the foregoing deposition was by me duly
sworn to testify the truth, the whole truth and
nothing but the truth;

That said deposition was taken down by me
in shorthand at the time and place therein named
and thereafter reduced to typewriting under my
direction, and the same is true, correct, and
complete transcript of said proceedings;

I further certify that I am not interested
in the event of the action.

Witness my hand this 29th day of October,
2012.



Certified Shorthand

Reporter for the

State of California